Institutions

or principall groundes of the Lawes and statuts of England, newly & very truely corrected & amended, with many newe & goodly additions, verye profitable for all sortes of people to knowe, lately augmented and imprinted.

Imprinted at London in fleetestrete within

The 3d Edition

Imprinted a at London in fleestrete

Imprinted at London in Fleetestrete within Temple Barre at the signe of the Hand and Starre by Rychard Tottell.

Imprinted

1580.

Rec. Dec. 7, 1904.

¶ The prologue of the authour to the reader.

DEmosthenes the renoumed Orator, defineth law in this wise. The law (sayeth hee) is the thing that all men ought to obey for many skilles, but in especially because law is the invention, and also the gift of God, the decrees of prudent men, the chastisement of wilfull and unwilfull offences, and finally the common suerte of a Realme, whereby it becommeth all men to liue, which bee conuersaunt in the same, Chrysippus also an excellent philosopher thus beginneth his booke of lawes.

¶ The law is king of all, as well diuine as humaine affaires, the president and comptroller of thinges honest and unhonest, the Prince Capitaine and ruler of the iust, and vniust, and it is of ciuile creatours, as well the commaunder what they ought to doe, as the forbidder, what they ought not to doe. These auntike sayinges of wise men allredy ought much to inflame vs to the knowledge of those thinges without which we shalbe esteemed no men, but as brute and sauage beastes. Let vs not committe, that it bee saide of vs Englishemen, as it was once saide of the men of Athens, that is that wee make verie goodlie and profitable lawes, but we vse thē not. Certeinely there can be no greater reproche to a common weale, then

this. One lesson I would we learned of ẏ ancient Romaine lawier named Celsus, and ẏ is this. The knowledge of lawe is not to beare away the wordes, but the pith and power of them. This he wrote because there be many which when good and holsome lawes be made seeke not to see them executed, & obserued, but rather how to defraude them and to haue them vnexecuted, which kinde of people after the sentence of most auncient lawmakers bee no lesse worthy of reprehension then they which do expressely against the lawe. Nowe they do (say they) against the lawe, which do the thing that the lawe forbiddeth. And they defraude a lawe or statute, which (the words of the lawe saued) do circumuent the meaning and sentence of it. Let vs then so reade the lawes that wee may beare away the sentence and minde of them, and so fulfill and obserue the lawes that it may appeare that they were not made in vayne.

Thus doing wee shal please God,
we shalbe obedient subiectes
to our prince, and finally
we shall seeke our
owne weale
& safety.

(∴)

THe lawe is the direction, and ministration of Iustice. And iustice is (as the Emperour Iustinian saith in his Institutions) a constant and permanent will to render vnto euerie person his right and duetie.

The learning or prudence of lawe, is a knowledge of diuine and humaine thinges, a science and perfect notice of equitie & iniquitie, of right and wrong.

Nowe forasmuch as a great portion of the prudence of science of the lawes of this realme of England, consisteth in the perfect knowlege of estates, which men haue in landes and tenements: wee shall first as compendiously, and as simplie and plainely as we can, treat somewhat of estates.

Diuision of estates.

WE shal therefore vnderstand, that whosoeuer hath any state in landes or tenents, either he hath in the same onelie a chattell or a holde, or inheritance. If hee haue an estate but for time of certein yeres or at his landlordes will, so it is called a chattel, if for terme of his life, or of another mans life, it is called a free holde. And if he haue to him and to his heires in fee simple or in taile, then he hath a state of inheritance. Chattel. fol. 6 Freeholde. Inheritance.

Tenaunt for terme of yeares.

TEnaunt for terme of yeres, is hee to whom landes or tenementes be let for terme of certeine yeres, as is agreed betweene the landlord and ỹ tenant. And when the person to whom such lease is made doth ẽter by force of the said lease, and is in possession of the same, then he is called tenaunt for terme of yeres.

Rẽt reserued. ¶ And here ye shal note that if the lessour that made the lease hath reserued vnto him a yerely rent vpon the saide lease, as it is accustomably vsed to be done, if the rent bee behinde vnpaide it shalbe in his election eyther to enter and distraine for the rent, or to bring an action of Det against him at the lawe for the arrerages of the same. But in this case it is requisite, that the lessour were seysed of the landes or tenementes at the tyme of the makinge of the lease, for otherwise it shalbe a good plee in the action of Dette for the tenaunt to say, that the lessour had nothinge in the lande and tenement at the time of the lease made, except the lease were made by deede indented, for then the plee shal not lye in the tenaunts mouth to pleade.

Action of det.

A good plee.

Liuery of seysõ needeth not in a lease for terme of yeres. ¶ And it is to be knowen, that in a lease for terme of yeres, whether it be by deede or without deede, there needeth no liuerie of seyson to bee made to the lessee, but hee may enter when hee will by vertue of this lease, without any further ceremony of the lawe.

¶ Also if a man leaseth landes for terme of yeares, though the lessour chaunceth to dye before the lessee doth enter, yet hee may enter well ynough. Otherwise it is where liuery of seyson is to be made, as in free holdes & inheritaunce.

Also

¶ Also if the tenāt for yeres doth wast, the lādlord may bring an action of waste against hym, and shal recouer the place wasted, and his treble dāmages. Waste.

¶ Also if a lease for yeres be made of .ij. seuerall thinges, and after the one is recouered, the lesse shal hold the other, and the rent or terme shalbe apporcioned .H.12.h.8.

¶ Also if the tenāt for yeres graunt a greater estate in the lande then he hath himselfe, whereby he cōuerteth the fee simple to himselfe, he shal forfait his lease or terme. Forfaiture.

Tenaunt at will.

TEnaunt at will is he to whom landes or tenements be lesed, to haue & hold the same at the will of the lessor. And in this case the lessour may put out his tenant what time him listeth. But yet neuertheles if the tenant haue sowed ȳ grounde with corne, in this case if the lessor will enter, and put out his tenant before Harueste, the lawe will geue him free commynge and goinge, to reape and cary his corne away, without any punishment or damages to be sustened for hys so doinge, because hee knewe not at what tyme the lessour wolde enter. But otherwise it is of tenaunt for certaine yeres, for if hee sowe the ground, & the terme of the lease be come out and expired before the corne be ripe, in this case the lessour or he in the reuersion may enter and take the corne, because it was the folye of ȳ tenant to sowe the grounde, knowynge the ende of his terme.

¶ In likewise tenaunt at will shal haue free

commynge and goyng after the time of the lesſours entre, to cary away his houſholde ſtuffe & good for a reaſonable ſpace.

Deſires or els action of det.

¶ Ye ſhal alſo underſtand, that he that maketh a leaſe at will, may reſerue an annuel or yerely rent, in which caſe if the rent be behynde he may enter verye well and diſtraine the goodes & catels of the tenant, or at his election he may bring an action of dette againſt him.

¶ Alſo it is to be knowen, that tenaunt at will of a meſe, or tenement is not bound by the order of the lawe to ſuſtaine & repaire the houſes that bee decayed and ruynouſe, as is the tenaunt for yeres, and therefore no action of waſte lyeth againſt him, yet if he will doe wilfull waſte as if he plucke downe the houſes, or cutte downe the trees: it hath bene thought by the ſages of the lawe, that the leſſour may bring an action of

Waſte.

Treſpas

Treſpas againſt him, & ſhall recouer his loſſes therby ſuſteined.

And if ſuch a tenaunt die, and his heire entre, in that caſe the leſſour may haue an actiō of Treſpas againſt the heire.

Tenant by copy of court rolle.

There is another kinde of tenāt at will which is called tenaunt by coppe of the court rols.

And this is when a man is ſeiſed of a maner, within which it hath ben vſed time out of mynde, that the tenaunts within the bonds & precinct of the ſaid maner, haue holden lands & tenements to the & to their heirs in fee ſimple, fee taile, or for terme of life, at the will of the lord according to the cuſtome of the maner. And ſuch a

tenant

tenant cannot alien or sel his land by his deede, for if he do, the lande or tenement that is soe alienied & solde, is forfait into the lordes handes, but if hee will alien his coppe holde lande to another, hee must accordinge to the custome come into the lordes court, and there surrender it into the lordes hande, to the behoue and vse of him that shall haue the estate. The forme of which surrender is commonly vied to be this. Surrender

¶ Ad hanc curiam venit A. de B. et sursum reddidit in eadē curia vnum messuagium &c. in manus domini ad vsum C. de D. & heredum suorum vel heredum de corpore &c. Et super hoc venit prēd C. de D. et accepit de dño in eadem curia messuagium predictum, habendum & tenendum sibi &c, ad voluntatē dñi secundū cōsuetudinem manerij, faciendō inde redditus seruitia, et consuetudines inde prius debitas, & consuetas &c. Et dat domino pro fine &c. et fecit domino fidelitatem. The forme of surrender.

¶ These as I saide be called tenants by copy of court rolle, because they haue none other euidence to shewe concerning their landes saue only the copies of the rolles of their lords courts.

¶ Neither can these tenants sue or be sued for such landes, in the kinges court, by writte or otherwise, but if they will in any wise impiede or sue others for such coppe landes, they must do it by waye of plaint in the lordes court after this sorte.

¶ A. de B. queritur versus C. de D. de placito terre. videlicet de vno messuagio xl. acris terre iij. acris prati &c. cum pertinenc, et facit protestationem sequi querelam istam in natura The forme of the plaint.

breuis

breuis dñi regis assise mortiz antecessoris ad cõmunẽ le gẽ vel &c. plegij de p̃sequẽd F. G. &c.

¶ Nowe although some such tenantz haue an inheritaunce accordinge to the custome of the manner, yet in very deede they are but tenauntes at the wil of the lorde: For as some men thinke if the lorde wil expell them, and put them forth, they haue no remedy at al but to sue vnto their lord by way of peticion, desiringe him to be good and gratious lord vnto them. For if they might haue any remedy by the lawe, then shoulde they not be called (say they) tenãts at the wil of the lorde after the custome of the maner. But other men of no lesse learninge and prudence haue ben of contrary sentence as lorde Brian chiefe iustice in the time of kinge Edwarde the iiij. whose opinion was alwaies that if such tenaunt by the custome (payinge his seruices) be eiected and put forth by his lorde without cause reasonable, hee may very well bringe and mayntaine an action of trespas against his lorde at the common lawe, as appeareth termino Hillarij anno xxi. E. iiij. Also lorde Danby chiefe Justice in likewise was of the same iudgement, as appeareth termino M. Añ vij. E. iiij. where he saith that the tenant by the custome is as wel inheritable to haue his land after the custome as is he that hath a freehold at the common lawe, but the determinatiõ of this questiõ I remit to my great maisters, who can solue the knottes & enigmats of the lawe.

Action of Trespas

¶ Forasmuch as yet stil of this matter. Causidici certiciñ & adhuc sub iudice lis est.

¶ Also ye shall vnderstande that the vsage of

some

some manour is, when the tenaunt will surrender his lande to the vse of another, that hee shall take a wande or a rod in his hande, and deliuer it to the stewarde of the court, and the stewarde shall deliuer the same wande in name of seisine to him that shal take the lande, and such a tenãt is called tenant by the verge. Diuers other customes there bee of surrendringe of coppe holde landes, which here for tediousnes I will omit. And for asmuch as tenaunts by custome of the Manor haue by the course of the common lawe no freeholde: therefore they be called tenaunts of baselenure.

Wase tenure.

¶ Also if such a tenaunt let to ferme his copy hold land for longer time then xij. monethes & a day without the lordes licence, it is a forfaiture of his land to the lorde.

¶ And knowe ye that if this tenaunt sell any timber that groweth vppon the lande but onely for the reperation of the same, this is waste & a forfeiture of his copy holde.

¶ Hetherto haue I treated of the first membre of our diuision, that is to wete, of Chattels, for as I saied, al leases for terme of yeres, and at will be accompted in the lawe but as chattelles, and bee compziled vnder that name, sane that they be called chattells reales, where as kyne, oxen, horses, money, plate, corne, and such lyke be called chattels personalles.

VIII = fol. 3. p. 1.

Chattel real & personel.

Nowe we
wil proceede to the explanation of the
seconde member, that is to
saye of free-
holdes.

Free

A diuision of freeholdes.

FRee holdes or frankie tenementes a man may haue in sundry wise, for either hee is seysed for terme of his owne life, or for terme of another mans life. If he be seised for terme of his owne life, eyther hee hath gotten such estate by way of purchase, or els the lawe hath intituled him thereunto. I call it by purchase, whether hee commeth vnto it by his owne bargainynge and procurement, or by the gifte of his frende, and I cal it by the operation and intituling of the lawe, when a man marieth a woman that is an inheritrix, and hath issue by her, and shee dyeth, nowe shall hee haue the landes duringe his lyfe, by the course of the lawe, and shalbee called tenaunt by the curtesye of England.

Tenant by the curtesy.

Tenant in dower.

In likewise if a man be seysed in fee simple or fee taile of landes, and taketh a wife, and hee dyeth, the lawe geueth vnto the wife the thirde part of her husbandes landes for terme of lyfe and she shalbe called tenant in dower.

Tenaunt for terme of life.

TEnaunt for terme of life, is he that holdeth lands or tenemēts for terme of his owne life, or for terme of anothers lyfe, Howbeit the most frequent & common maner of speaking, is to cal him y hath estate for terme of his own life, tenant for life, & him that hath estate for terme of an other lyfe. tenant pur terme dvter vie, that is to say, tenāt for terme of an others life.

Ye shal note, that lyke as hee that maketh the lease is called the lessour, and he to whome the

the leale is made, is called the lessee, so he that maketh a feoffement is called the feoffour, & he to whom the feoffement is made the feoffee.

¶ Also if tenaunt for terme of life, or tenaunt for terme of an other mans life do waste, the lessour or he in the reuersion shal maintayne verye wel an action of waste against him and shall by the same recouer treble dammages. Waste.

¶ Fynally ye shal vnderstande that by an act of Parliamēt made in the xxvij. yere of our soueraigne lorde that nowe is, kinge Henry the eyght, it is enacted that no freeholde, nor estate of enheritance shall passe nor take effect by reason of any bargayne and sale, except that same be made by writinge indented, sealed and enrolled in one of the Kinges maiesties courtes at Westminster, or els within the same countie where the lande doth lye, before the custos rotulorum and ij. Justices of peace and the clerke of the peace of the same county, or two of them at the least, of which the said clerke shalbe one, & that such inrollement bee made within sixe monethes after the date of such writinge. And for the inrollement of euery such writinge where the land compriled therein is not aboue the yerely value of forty shillinges, they shall take two shillings, that is xij. pence to the Justices, and xij. pence to the clerke. And if the land be aboue the yerely value of xl. s. the they shal take v. s, that is ij. s. and vj. d. to the Justices, and ij. s. and vj. d. to the clerke which shall inrolle and ingrosse sufficiently in parchement such bardes any writinges, and at euery yeres ende he shall deliuer the same to the Custos rotulorum of the same county, to remayne

In. 27. H. 8.

in

in his custody amonge other recordes of the sāe county, so that the parties resortinge thyther may see them. Prouided that this extende not to any tenements or hereditamēts lying within any citie or towne corporate wherin ye Maires Recorders, or other officers haue auctoritie, or haue lawfully vsed to enroll any euidences or writings within their precinct.

¶ Tenaunt by the curtesie.

TEnaunt by the Curtesie of Englande is he that hath maried a wife inherited, and hath had issue by her, and she is dead, in this case the lawe of Englande permitteth & suffreth ye husband of such wife to receiue and kepe still all his wyues lande that she had eyther in see simple, or fee taile, so long as he liueth. And this is by the curtesie, and vrbanitie of Englande, for this thinge is vsed in none other countrye nor region.

¶ But in this case it is required that the child be vieall, that is to say, bee borne and brought forth into this world aliue, & therefore the common sayinge is, and hath bene, that vnles the childe be heard crie, the father shal not be tenant by the curtesie, for the onely proue & argument of life in an infant borne is the vagite & crying. Ye shal furthermore vnderstande, that vnlesse the husbande bee in actuall and reall possessyon of his wiues landes, and seised of them in her ryght, he shall not be tenaunt by the curtesye after her death. And therefore if lands discende to a mannes wife, so that she is tenaunt in the lawe, and to euery mans action, yet if the husbande haue not made an actuall entre duryngе

couerture

couerture & matrimony betwene them, he shall not be tenant by curtesye, for it shalbe reputed & iudged his folly and negligence, that he woulde not enter in her life time.

¶ Otherwise it is of aduowsōs, rents, cōmōs & such other thinges, which forthwe when they discend, be in a man or a woman without any entre or ceremony of law.

¶ Note that if tenant by the curtesie of England wil suffer or make any wast in the landes or tenements that he so holdeth, he is punishable therefore by action of wast brought by hym in the reuersion.

¶ Also it is to be knowen, that of things that bene in suspence, a man shal not be tenāt by the curtesie, and therefore if a man be tenaunt in fee simple of certeine lande, and doth entermarye wt a woman that is the seigniorresse or lady of the same, and hath issue by her, and shee dyeth, yet shall he not be tenaunt by the curtesie of the lordshippe or seigniorie, because himselfe ys tenaunt of the lande, and therefore the lordshippe is suspended for the time, for a man cannot bee both lorde and tenant of one thing, but if he had not bene tenant of the lande, he should haue had the lordshippe after the death of his wife by the curtesie of England very well.

¶ Also note that of a right onely a man shall not be tenaunt by the curtesy, as if a woman sole seased in fee of lande or tenementes, be disseised, and after take a husbande, and they haue issue, and she dye before any reentre made, the husbande shal not be tenaunt by the curtesy.

¶ Note further that of a reuersion, a man shal not bee tenaunt by the curtesye, as if a woman

sole

sole seased of lande in fee, make a lease to S. for terme of lyfe, after taketh a husbande and they haue issue, and she dy liuinge the lessee for terme of life, the husbande shall not bee tenaunt by the curtesie.

¶ Of tenaunt in dower.

Tenaunt in dower, is she that hath bene maried to an husband that was during the matrimony betwene them, seased of landes or tenements in fee simple, or fee taile which is now dead, & shee seased of the thirde part of her husbands said lands for terme of her life. For by the common lawe of the lande if the husband be at any time duringe the couerture seased lawfully, whether it be by purchase or by discent, eyther in fee, or in taile, & dye, his wife shall bee endowed by the course of the common lawe of the thirde foote. And in some places by an auncient custome shee shalbe endowed of the moitie, yea & thoughe the husbande were neuer seased actually duringe the couerture, yet if the landes be cast vpon him by the lawe, so that the law calleth him tenaunt to euery mans actyō, it suffiseth the woman to demaūd her dower, for it were vnreasonable that the negligence and slacknesse of entringe of the husband should hurt the wiues title.

Dower at the common law.

Dower by custome.

¶ Otherwise it is, as is said before of tenant by the curtesie, for if landes descended to a woman couert and the husbande for slothfulnesse or negligence doth not enter in hys wiues lyfe, he shall not be tenaunt by the curtesy, for by all lawes the wyfe oweth obedience and subiectiō

Tenaunt by the curtesy.

to her husbande, and therfore shee can not cōpell him to enter, but when landes descende to the wife, the husband onely hath power to entre at his pleasure.

And ye shal understande that vnlesse ẏ wyfe be passed the age of nine yeres at ẏ time of her husbands death, shee shall not be endowed by the common law.

But it is to be knowen that a woman maye dy diuers waies estoppe and preiudice her selfe of her dower: as if shee committe any crime, for which shee is attainted of treason, murder, or felony, shee get in this case no dower, notwithstanding she hath obteined her pardon. A womā shal haue no dowē.

Also if after the death of her husbād shee take a leas for terme of life, of the same landes wherof shee is endowable, she loseth her dower of the same. Moreouer if she depart from her husbande and liueth in aduoutry with another man & is not reconciled againe to her husband without correctiō of the ecclesiastical power, she loseth her dower after her husbands death, she shalbe also barred of her dower if she wil withhold from the heire, the charters & euidence, cōcerning that lād wherof she asketh dower. But none other saue the heir e can withhold her dower for this cause.

It ought not to be vnknowen also, of what thinges she may demaunde dower, & of what things not. Of landes, messuages, aduowsons, rent charge, rent seruices, or seignories, in gros or otherwise of villaines, of commons certayne, of estouers certayne, of milles and offices, or of the profit of them, she is dowable. But of commons and estouers sans nombre al- No dower.

so of annuities, of homages, of thinges of pleasure, as of service of paiment of roses, & semblable, she shal not be endowed.

There be yet two other kindes of dower the one is called dowemēt ex assensu patris, that is to say by the assent of the father, & the other is called dowement de la pluis beale parte. That is to say of the fairest parte.

Dowmēt ex assensu patris.

¶ Dowemēt ex assensu patris, is whē the father is seased of lands in fee simple, & his sonne which is heire apparant, endoweth his wife at the church dore when he is espoused of parcell of hys fathers lands, with the assent of his father in writing, testifyng the same assent, if in this case her husbād die, she may forthwith enter into the land so assigned vnto her, without further appointment of proces of law, although the father of her said husbande be yet aliue, and in actual possession of the lande. But if she thus do, and take her to this ēdowmēt at the church dore: she cannot haue her dower also by the cōmon lawe of the third part of all her husbands lands or any parcel of them, how be yt if shee wyll refuse this assignement made vnto her at the church dore, & demaunde dower at the common law, she may so doe verye well.

Dowmēt ad hostiū ecclie.

A man may also endowe his wife at the time of the espousells of his owne landes, the which he hath in his owne possession, & that dower is called dower ad hostiū ecclie, that is to saye, at the church dore.

Dowment de la pluis beale.

Dowement de la pluis beale, that is to say, dowment of the fairest part, shalbe in this case, whē a man is seased of lands which he holdeth

of

of another man by knights seruice, and of other landes which bee of socage tenure, & hath issue, which is within the age of xiiij. yeres & die, and the lord of whom the lads ar holden by knights seruice entreth into the land holden by him, & the mother of the childe entre into socage tenure, as gardeine in socage, if in this case the woma will bringe a writ of dower against the lorde which is gardein in chiualry, hee may plede the special matter, and shewe howe shee as gardeine in socage hath so much lande, and thereuppon pray the court that shee may be suffered to endowe her selfe of so much land, being in her owne custodye, as amounteth to the thirde parte of the whole landes.

And then the iudgement shalbe that the gardeine in chiualry shal retaine the land holden of him quite frō ỹ woman, during ỹ nonage of ỹ ward. After which iudgement & sentence geeuen shee may goe, and in presence of her neighbours endowe her selfe of the best p̄t of ỹ which is in her custody, amountinge to the third part of the whole, & then is she called tenant in dower de la pluis beale.

Finally ye shal understand that by a statute made in the xxvij. yere of oure most dread soueraigne lorde kinge Henry the eight it is enacted that where diuers personnes haue estates made to them and to their wiues, & to the heirs of the husbande, or to the husbande and wife and the heires of their two bodyes begotten, or to the heires of one of their bodies, or for terme of both, or one of their liues, or any other personnes and theire heires, to the vse of the husbande and wife, or to the wife alone for

27.H.8.ca.

her iointure: in euery such case the woman shall not be suffered to demaunde any dowrye of the reliefe of her husbands landes to whome shee hath ioynture against any tenaunt of the lande. But in case shee hath no such ioynter, then may shee demaunde her dowry after the course of the cõmõ lawe. Prouided neuertheleſſe, that if such women be lawfully expulsed from their ioynter or any parte thereof, without fraude or couine; then shal they be endowed of ỹ relief of their husbands landes, forasmuch as the landes shall amount vnto, out of which they were so expulsed and put forth.

Prouyded also, that if landes or tenementes bee assured to anye woman after mariage for terme of life or otherwise in ioynture except it be by act of parliament and the wife ouerlyue her husbande in whose tyme the ioynture was made, in this case the wife may refuse the landes so appointed vnto her in ioynture, & haue her dower at the common lawe, of such landes as her husbande was seised of, at any time duringe the coverture.

Also if the husbande committe treason, murder or felony for which he is attainted, the wife shal not haue her dower.

And note that if the husband enter into religion, & is professed, the heire shal enter into the lande, but the wife getteth no dower til the husbande dyeth. M.32.D.2.

And likewise, if a man seysed of lande take a wife that is alien borne, and dyeth, she shall not be endowed, except shee be made denizen by act of parliament. E.3.N.6. And note ỹ where the wife bringeth a writ of dower, & recouereth her

her right shee shall recouer no dammages, but where her husbande died seysed of ꝯ landes recouered. Dammages.

A deuision of inheritance.

HEtherto haue I spokē of freholds, now it remaineth to treate of inheritaunces, not the inheritaunces bee no freeholds, for they be freholdes also, but of the other estates of which I haue heretofore treated be onely freholdes, and of no higher nature where as a state of inheritaunce although it bee a freholde in dede, yet it is not to be called by name, sith it is a far more excellent & greter estate. But ye shal vnderstāde, ꝯ inheritaunces some be of more amplitude & excellency then other some bee, as that inheritaunce which is pure simple, & without limitation of what heirs which kinde of inheritance is called fee simple. But when I make a limitation of what heirs, thē it is called fee taile, of which also bee two sortes, as hereafter more at large shalbe declared. Now therfore the nature of fee simple is set forth with our accustomed compendiousnes. Fee simple.

Of fee simple.

FEe simple is as I sayd the most ample & large inheritance ꝯ can bee in this realme deuised or recognate, as the which a man hath to him & his heirs simple without any further limitation, for whether they be of his owne body begotten, or not so ꝯ they bee the next of his kinne, & with ꝯ degrees it sufficeth. So then tenant in fee simple is he that hath

lands or tenemēts whether it be by purchas or by discent, to him & to his heires & assignes for euer. For if a manne wil purchase landes in fee simple, he must nedes haue these words his heires in his purchase, for these bee the only words that make the state of inheritance.

Therfore if landes be geuen to a man for euer, & no mention be made of his heires: he hath an estate but for terme of his life, because these words his heires do lacke.

Deuyse

Yet neuerthelesse, if a man by hys testament doe deuise landes to an other in such a place, or case where the custome or lawe will serue so to do, though he make no mention of heires but saieth that he bequeueth to such a person such lādz, to haue & to hold to him & to his assignes for euermore, here a state of inheritance doth ensue, for in testamēts the wil & intent of the testatour is to be pondered, & not ẏ formal & prescript wordz of the lawe.

Fee simple.

Also these termes in the lawe, franke maryage, & franke almoigne, that is to say, free maryage & free almes, do include in them wordes of inheritance.

And therfore if I geue lands to a man with my daughter in franke maryage without further addition or mencion of heirs this is an estate of inheritaunce, as wee shall hereafter declare more plenteouslye. In likewise it is in lands geuē to an house ecclesiastical in pure and franke almes. Moreouer if landes bee geuen to a man and to his bloud, or vnto him and to his seede, he hath in both cases a state of inheritāce, for in the lesse he hath a fee taile, and in the other a fee simple. For this word seede, and bloude,

Donū semini et sāguini suo quid sit.

& such like do emply wordes of inheritance.

¶ Also if lands be geuē to a mā & to his heirz males or females, he hath by this gift a fee simple, because it is expressed of what body the issue shal come.

¶ But now it is to be seene who be sayde a mans heirez in the law, ye shal therefore know that my brother or sister by the halfe bloud, that is to wete, by the fathers side, and not by ẏ mothers, or cōtrary wise by the mothers & not by the fathers, shall neuer be mine heire, nor none that come of them. The halfe bloud.

¶ Neyther my bastard can bee mine heire, nor mine owne natural father or mother, nor graūd father, nor graundmother can bee mine heire. For it is a principle & ground of the lawe that inheritāce may lineally descēd, but ascēd it may not. And therefore if I haue lands in fee simple and die without issue of my bodie, my father cannot be mine heire but my fathers brother or sister shal, & then if my vncle or aunt die seysed without issue, my father shal haue the lands as heire to mine vncle, and not as heire to me, for that cannot be. A bastarde shalbe no heire a ground of the lawe.

But it may go from me to my vncle or aunt wel ynough, for that is not called a lineal ascētion but a collateral discent.

Also ye shal vnderstand that lineal discent is when the discent is conueied in the same lyne of the whole bloud, as graundfather, father, and sonne, & so downe. And collateral discent is on another branche, from aboue of ẏ whole bloud, as the graundfathers brother or fathers brother and so discending. Lineal & collateral discent.

And ye shal note, ẏ by the cōmō law of this

realme, the eldest sonne shall haue the whole inheritaunce, and after him if he haue no issue the second sone, & so forth. And if I haue no sones but daughters, then shal all the daughters together inherite which be called coparceners, but if I haue no issue at al, neither sones ne daughters, then shal my eldest brother inheritage succede me, but and if I haue no brother then my sisters if I haue any, if not, my uncle by my fathers side, if the landes be mine owne purchas. And to be short, if there be none in life, of my fathers side it shal go to my mothers side, and if there can be found no heire neither by my fathers side nor yet by my mothers, then shall it reuerte and eschete as they call it, to the Lorde of whom it was holden, for euerie lande must needes be holden of some lord, as shalbe hereafter shewed. But if lands discend vnto mee by my mothers side, then if I faile of issue, the lands shal discend onely to my heire of my mothers side, and neuer to mine heires of my fathers side: as on the contrarie side, if I haue lands or any hereditamēts by discent frō my fathers or his blood, they shal neuer discend to my heires by my mothers side.

Coparceners.

Eschete.

Diuersitie.

And thus ye see a great difference in this behalfe, betweene purchased landes, & landes which discend from mine auncestour.

A ground of the lawe.

If there be three sones, & ỹ middle sone purchase landes & die without issue, the eldest shall haue the lands and not the youngest.

Also it is a principle in our lawe, that none can be mine heire of landes that I holde in fee simple, vnles he be mine heire by ỹ whole blood that is to say both by father and mother, for if

a man

a man haue issue two or three sonnes by sundry wiues, & ye eldest purchaseth lands in fee & dyeth Sout issue, his halle brother, I meane those that be not his brethren both by ye fathers side, & mothers side, shal not haue the lād, but it shal go to his vncle.

Likewise if a man haue by hys first wyse a sonne and a daughter and by his seconde wyfe another sonne. & the sōne by the first wife purchaseth landes in fee simple, & dieth Sout issue, ye sister germaine, that is to say, both by fathers side & mothers shall haue the landes by discent as heire to her brother, & not the yōger brother for asmuch as the yōger brother can not in this case be heire to the elder brother, because hee is no brother germaine vnto him. Otherwise it is of landes or other hereditaments entailed as shalbe hereafter specified.

Also if a man be seysed of landes in fee simple & hath issue a sonne & a daughter by one wife & after the death of his first wife a sonne by another wife, & dieth, & the eldest sonne entreth into the lands, & after he dieth without lawful issue of his body, the daughter shall haue the landes & not the yongest sonne & yet the yongest sonne is heire to his father, but he is not so to his brother. But if in this case the eldest sonne had not entred after the death of his father but had died before any entre made by him, then shall not the sister germaine enter, but the yonger brother is heire to his father because ye eldest brother was neuer in actual possession which is requisite to the person that claymeth to be heire collaterally.

But to the lineal heires, it suffiseth that the

auncesf-

auncestour should haue beene heire, if he had lyued. I meane as thus. A man seised of landes and hath issue a sonne and a daughter by one wife, and afterward a sonne by another, he dyeth and after his death the eldest sonne entreth not but dieth without issue before he can make actual entre, here in this case his sister shall not haue the landes as heire to her brother because her brother was not actually possessed, but ẏ yõger brother shal haue thẽ as heire to his father, yet if the eldest sõne in that case, had left behind him issue of his body whether it had ben sonne or daughter, this issue notwithstanding ẏ the father of the issue was neuer possessed either actually or in the lawe, shal haue the lãds, & shall conuey his discent frõ his father, the cause hereof is this, that the sonne or daughter is lineal heire, where as the brother, sister, vncle, aunt &c. be heires collateral, and so ye shal obserue a diuersitie.

Diuersitie.

I call an actual possession, whẽ a man entreth in deede into landes, which bee to him discended, but a possession in law is called when lãds bee descended to a persõ, into which he hath not yet really & actually entred. For notwithstanding that he is not in actual possession, yet he is possessed in the law, ẏ is to say, in ẏ cie a consideration of ẏ law he is deemed to be possessed, for asmuch as he is tenãt to euery mãs action that will sue for ẏ said landes, or els assuredly there should ensue an intollerable incõueniẽce as we shal more copiously open in another place.

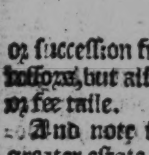
Hereditas q̃d sit.

We shall furthermore vnderstande that this word inheritance is not onely to be accõmodate and applied to that which commeth by discent

or succession from a mans auncestors or predecessors, but also to euery purchase in fee simple or fee taile.

And note that a man can haue no larger or greater estate then fee simple.

Of fee taile.



We shal understand ye before a certain statut called ye stat of westm secōd, there was no state taile, but al was fee simple, either purely, ye is to say, without condition at the least way conditionally as appeareth by ye pretence of the said statute, but now we withens the promulgating of the statut, dyuers formes of estates taile haue risen. West. 2. cap. 3.

Fee taile is whē it is prescribed and limitted in the gift, what sort of heirs, and by whom engendred, shal inherite. Diuision.

And for example, I geue lands to a man & to his heires & go no further, this is a fee simple: but if I make a limitation, & adde of his bodie begotten, now it is a fee taile, that is to say, a fee or inheritance limitted, prescribed, determinate, or assigned.

So that if I geue lands to a man and to his heires, he hath fee simple, but if I geue landes to him & to his heires of his body lawfully begotten, he hath but a fee taile, forasmuch as I appoint, limitte, prescribe, and express what heires they shalbe, and for lacke of such heires, the gift shalbe expyred and worne out, and the lands shalbe reuerted againe to the geuer or his heires.

But yee must obserue and note that there be two kyndes of fee layle. There is a general

taile,

taile, & there is special taile.

Fee taile general is as where lands be geuē to a man & to his heires of his bodie begotten Wout any mētioning & expressing by what woman they are begotten.

General taile. And therefore if a mā be tenant in the generall taile of landes, and taketh a wife and hath issue by her and she dieth, and afterward he taketh another wife, of whom he hath also other issue, here eyther of these issues is inheritable to this lande intayled. But if I expresse in the gift by what woman the heire shalbe procreate and ingendred, then it is an especial taile, as for example to make the thing plaine, if landes be geuen to a man and to the heires of his body lawefully begotten by Margaret hys wyfe, this is an especiall taile, for the issue of him begotten by another woman shall neuer inherite by force and vertue of the taile. Likewise it is if lands be geuen to a woman & to ẏ heires of her body lawfully begotten and shew not by what man, this is a general taile, but if I go forth & say by such a man her husband, then it is an especial taile.

Especial taile.

Also if I geue lands to a man & to his wife, & to the heirs of their two bodies lawfully begotten: this is an especial taile, as well in the husband as in the wife.

Franke mariage. Semblable it is if a man geue landes to another man with his daughter, or kinswoman in franke mariage, this word franke mariage implieth a state taile especially, and in this case as wel the man as the woman hath estate in the special taile.

But if I geue lands to a man and to such a

woman

a woman, & to his heires that he hath begotte of her, here the woman hath estate but for terme of her life, and the husband an estate in the speciall tayle. And likewise it is in the womans behalfe, as if I geue landes to a man & to hys wyfe, and to her heires of her bodye of her said husband engendred, he hath an estate but for terme of life and she an estate in the speciall tayle. But in both cases, if I had saied to the heires, and not to his or her heires, then should eyther of them haue had an estate in the speciall tayle, because this word heires is as well referred to the one as to the other.

Ye shall also vnderstand, that if landes be geuen to a man, & to the heires males of his body this is estate tayle, & in this case ỹ heire female shal neuer inherite. Dissent by heires males.

Also if a man haue issue and dieth, & landes be geeuen to him and to the heires of his body begotten, this is a good estate tayle, although the father were dead at the time of the gift.

Finally it is to be noted, that of landes which a man hath in fee simple the possession of the brother shall cause the sister germayne, that is to say, the sister both by the fathers side & mothers to enherit, and in this case the brother by the halfe blood shal not inherite, as heretofore was sayd, but of landes which bee entayled otherwise it is. Therefore if a man be seased of landes in the general tayle, and hath issue by hys first wyfe a sonne and a daughter, & also a sonne afterward by another wyfe, and dieth, and the eldest sonne entreth into the landes, and after dyeth, the sister germayne to the eldest sonne shall not haue the lands, but the yonger

brother

brother of the halfe bloud, because whosoeuer shal inherit lāds or any other hereditaments in taile, must claime them as next & immediatly heir not to him that dieth last seysed of the lāds, but to him to whō the lands were first geuen vnto, which in the case before remembred, is the sonne & not the daughter.

Diuersitie. Thus ye shal marke a great diuersity betwene the forme of succession in the landes of fee simple, & the forme in fee taile.

Tenaunt after possibility of issue extinct.

When landes tenementes or other hereditaments be geuen to a man & to his wife, & to the heires of their two bodies lawfully begotten, yf in this case either of them chaunce to dye before they haue issue betwene thē, he or she that ouerliueth is still tenaunt in tayle, but without possibilite of any issue that can be heire to these lands or hereditaments thus entayled, and for this cause he or shee thus ouerliuynge is called tenaunt after possibility of issue extinct, for in such a tenaunt is al possibility of issue that may be inheritable to these lāds by force of the gift in taile vtterly extinct or quenched, and by his or her death the state taile shall expire, cesse & be abolyshed for euer, and shall reuert & turne againe to the geuer or donour from whence ye came.

Dispunishable of wast. Yet forasmuch as this tenaunt after possibylitie of issue had once an inheritaunce in hym, he shall not be punished by an actyon of waste; though

though he make neuer so much waste in the lāds & tenemēts, where as yet in effect he is but a tenaunt for terme of life.

But if this tenant do alienate in fee such lāds, he in the reuersion may enter for the forfaiture. Forfaiture.

And this for estates at this present time shal suffice. But to the entent that ye may the more easely comprehende al the members of the deuision of possessions and estates which men maye haue in landes, tenements, and other hereditaments, it shal not be euil done to set forth as it were in a table before your eyes the deuision thereof which is this.

Fee simple.

State of inherytaunce.	Fee taile.	Generall Speciall After poss.
After the common lawe.		Curtesie of Englande. Dower.
	Frank tenēt.	Terme of life.
Franke onely tenement.		Terme of others life.
Possession	After the custome	Which is deuided in like maner as franktenement by the common lawe.

Terme of yeres.

Reall	Warde of landes.
Chattell	At wyll.

Personal. Al goods moueables.

Hether=

Of Parceners or other coheires.

HEtherunto I haue made a cōpēdious & short declaration of estats of al sorts, But where I said, that among sisters there is no prerogatiue or preeminence concerning the inheritinge of their aūcestors landes but that they shalbee altogether inheritors, and make as it were but one heire it is expedient to make a further declaration & processe in this behalfe, & to shewe howe and in what maner this partition shalbe made.

Diuision, parceners at the commō lawe, parceners by custome.

But ye shal vnderstand, that there be beside parceners at the common law, which be onely sisters, also parceners by custōe, which is amōgst brothers contrary to the course of the common lawe, & this custome is in some places of Kent, & in other places where lands & tenements bee of the tenour of Gauelkinde.

Ye shall therefore knowe, that when a man is seased of lande in fee simple or fee taile, & hath no issue but daughters, and dye, and the daughters doe enter into the lands thus descēded vnto them, now they bee called parceners or coheires, and by a writ called de partitione faciēda, brought by one of them against the other, they shalbee constrayned by the lawe to suffer an egal partition to be made of the lands betwene them.

Writ de ꝑticione facienda.

Partition in diuers mānerz

Nowe partitiō may be made in sundry waies, One way is when they them selues doe make pertition betwene them of the whole heritage & doe agree vnto the same, & do enter euery one into her part so allotted vnto her.

Another way is when by all their agreement and consent one commō friēd doth make the partition, in which case the eldest sister shall

haue

haue the first election, and after her the seconde sister, and so forth. But if they agree that the eldest sister shal make the particion, and she maketh it, the ye eldest shal not choose first, but shal suffer al her sisters to choose before her, as it is thought.

There is also an other fourme of particion which is equally to deuyde the landes into soe many partes as there bee heires or parceners, and to write euery parte soe deuyded in a seueral scroule of paper, and to put the said scroules in a bonet, or to enclose them seuerally in balles of ware, and then the eldest sister to choose which balle she will, or to put her hand into the bonet, and to take a scroule, & to hold her to her chaunce and allottement, and so consequently euery sister after other.

And yo shal note, that particion by agrement may aswell be made, by nude and bare woordes without writing, as by writing. Note

And if any of the parceners will not suffer any particion to be made, then may ye other that woulde haue particion purchase a writte called de partitione faciend, against them that refuse particion to compell ye same to suffer particion to be made accordingly, & then by the iugement of the court, the shirife by the seerement and othe of rij men shal make particion betwene them, & shal assigne to eche sister her portion, as he shal thinke good, without giuinge any election of choise to the eldest. A writte De partitione faciend.

¶ And if two Granours or meases happen to discende to two sisters, & the maners be not of equal value, the may she, to whom the lesse maner or mease is allotted, haue assigned unto her

Distres of cõmon right.

a rent proportionably out of the other manerfor the which rent the & her heires may straine of common right, though they haue no writinge thereof.

Finally, ye shall understande, that if a man be seyled of landes in fee simple, and hath issue two daughters, & marieth with one of hys daughters to an other man that shal mary her, the thirde or fourth parte of his land in frankemariage and dyeth, if in this case the daughter that is in this wise bestowed and auaunced, will haue her portion of her fathers heritage, shee must put her land geuen vnto her in frãke mariage in Hotchepot newe againe, I meane shee must be contented to suffer her saied landes to be commixt and mingled with the other landes of which her father died seyled in fee simple, so that an equal deuision may be made of ꝑ whole, or elle shee shal haue no part of thole landes of whych her father dyed seyled. But if her father had made vnto her out a condition gyfte in tayle, or feoffement in fee, shee should not neede to put her landes in Hotchepot, but may very well kepe & retaine them still, and also haue as good part of the rest of the landes of which her father dyed seised, as her other sister or sisters haue.

Hotchepot

Frankemariage.

For a gift in frankemariage is accompted the most free & most liberall gift that can bee, and that gifte which the lawe iudgeth to bee onely for the auauncement and bestowing of ꝑ daughter, where as feoffementes in fee simple, and also condition giftes in tayle be accustonably for other causes, & for the aduantage rather of the getter, or feoffour, then of the taker.

Also if parceners make partition of landes

being within age, that partition is voide.

¶ And if parceners in fee simple make partitiō and the parte of the one is better then the other being of full age of xxi. yeres, then the partition is good, and cannot be defeated, but if it bee of landes in fee taile, the one part beeinge better then the other, that partitiō may be defeated by their heires.

¶ Of Iointenaunts.

HItherto verely haue wee spoken of Coheirs called Parceners of the common law, which as is heretofore declared doe come to landes & other hereditaments iointly by the course, operation, and act of the lawe. Nowe shall wee speake somewhat of them which eyther iointly or seuerally come to landes, tenements, or other hereditamentes by their owne purchase, act, procurement, and workinge. And of these, they that come to them by ioint title, waye, or colour, be called iointenantes, but they that come by seuerall titles, wayes, or colours, to landes or tenementes, bee named tenaunts in common.

¶ So then, if a man being seysed of landes or tenements or other hereditaments shal thereof enfeoffe two, three, foure, or more, to haue and to hold to them in fee simple, fee taile, or for terme of their liues, or for terme of anothers lyfe, these persons so enfeoffed and seased bee called Iointenantes. Also if two or moe doe expell and disseise another manne of any landes or tenementes to their owne behoue and vse: these disseisours and wronge doers are nowe

Tenants in common.

become iointenants, because by their owne act they come iointly to this lande. But if they doe disease another man to the vse onely of one of them, in this case they be not iointenantes but he to whose vse the disseisin is made tenaunt alone of the same, & the other haue nothing in the tenancy, but be called aydours or coadiutours to the disseisin.

Disseisin.

And ye shal vnderstand, that a disseisin is properly where a man entreth into any landes or tenements there where his entre is not lawful, and putteth out him which hath the freeholde of the same.

Survivour taketh place.

And ye shal furthermore knowe, that the nature of iointenancy is, that he which survyueth and ouerliueth the other, shal haue to him selfe alone the whole and entire tenancy accordynge to that estate which he should haue had if the iointure had bene continued, as (for example) three Iointenants bee of landes in fee simple, and the one hath issue and dyeth, in this case the two which doe ouerline their fellowe, shal haue the whole landes betwene them, and the issue of him that is departed getteth nothinge. And if the second iointenant hath also issue and dye, ye third which hath ouerliued them both shal now haue and enioy the whole to him & to his heirs for euermore.

Diuersitie.

But otherwise it is of coheires which in our lawe be called parceners. For if there bee iij. such coheires & parceners, and before any partition made, ye one hath issue a sonne or a daughter and dyeth, his portion shal discende & fall to his childe, & shall not runne amongst the other ioint heires or coparceners.

Howe

Notwhelt if such parcener or coheire had dyed without ilsue, then should his portion haue discended to his coheires. But how? not by force of survivour or overlivinge, which in latin is called jus accrescendi, but by verye discent, for where any of ỳ coheires dye without ilsue, who can be heire to him or her so dying, but the other coheire or the rest of ỳ coheires if there be many. ¶ And like as this right of survivour or overlivinge holdeth place amonge jointenantes of landes and tenements, so in like maner it holdeth place amonge them which haue joint estate or possession with others of chatelles whether they be real or personal. As (for example) if a lease of landes or tenements be made to many for terme of certaine yeres, the over liver or overlivers shall haue the whole during ỳ terme by force of the same lease. So of chattels personal, if an horse, ore grayne or other such small chattel be geuen to many, he which overliveth shal haue the same alone. In semblable wise it is of debtes and duties, for if an obligation be made to many for one debte, or for other covenants and contracts.

Jointenantes of reall or personal goods.

Also some jointenants may be which may haue joint estate and bee jointenantes for terme of their liues, and yet haue seuerall inheritantes. As where landes be geuen to two men and to the heires of their two bodyes engendred, in this case, these two persons haue joint estate for terme of their two liues. And yet they haue seuerall inheritaunces: for if the one haue ilsue and dye, the other that survyueth shall haue al by force of the survivour for terme

Jointenantes of seuerall inheritances.

of his life. And if he that surmyseth hath also yssue and dye, then the yssue of the one shal haue the halfe of the landes, & the yssue of the other shal haue thother halfe, and they shall holde the lande betweene them in commune & shal not be iointenants, but tenaūts in common, & the cause & reason why such dooees in such cases haue ioint estate for terme of their liues, is for that at the beginning the lands were geue to the two, which wordes without more sayinge, make a ioint estate to them for terme of their liues, for if a man wil let land to another by dede or without dede, not makinge mention what estate he hath, and of this maketh liuery of seisin, in this case the lesse shall haue estate for terme of hys life. And if he haue no liuery of seysin, he is but tenaunt at wil. And so for almuch as the lands were geuen vnto them, they haue a ioint estate for terme of their liues. But the cause why they haue seuerall inheritaunce, is this for that they cannot by possibility haue an heire betweene them engēdred as a man & a woman may haue, wherefore the lawe wil that their estate & their inheritaunce shalbe such as reason wil after the forme and effect of the wordes of the gift, and that is to the heires that the one engendred of hys body by any of his wiues, and to the heirs that the other engendreth of his body by any of his wyues. So it behoueth by necessitye of reason, that they haue seuerall inheritaunce. And in such case if the yssue of one of them after the death of them both dieth dye, so that he hath no yssue alyue of his body engendred, the donour which gaue the lande or his heires maye entre in the halfe as in his reuertiō, though the other

Tenaūntes in common.

haue

haue issue aliue. And the cause is ẏ forasmuche as the inheritances be seueral, therefore the reuersion in ẏ law is seuered, & the suruiuour of the issue of the other shal holde no place to haue the whole. And as it is said of males, in ẏ same maner it is where lãds be geuen to two females & to the heires of their two bodies begottẽ.

Suruiuour holdeth no place.

¶ And if lãds be geuen to two & to the heires of one of them, this is a good iointenauncy, and the one hath a freeholde, and the other hath a fee simple, and if he which hath fee simple dye, hee ẏ hath the freehold shal haue ẏ whole by ẏ suruiuour for terme of his life.

¶ And if these two iointenants ioine in a gift in the taile to a strãnger, reseruing a rẽt to him ẏ hath an estate but for his life, this reseruatiõ is void to make a tenure. Likewise it is where tenemẽts be geuen to two & to ẏ heires of ẏ body of one of thẽ engendred, the one hath freehold & the other in fee taile.

¶ Note, if two iointenants be seysed of estate of fee simple, & the one graunteth a rent charge by his deede to another out of ẏ which to him belongeth, in this case during the life of ẏ grãtour, the rent charge is good & effectuall, but after his decesse the rent charge is voide as to charge the lands, for he ẏ hath the land by the suruiuour shall hold al the land discharged, the cause is for that he that suruiueth claymeth to haue the land by the suruiuour, & not by discent of his fellow.

Rent charge graunted by a iointenaunt.

But otherwise it is of pceners or coheires, for if there be ij. parceners in fee sĩple, & before anie pticiõ made, ẏ one chãgeth that, that to him belõgeth by his deede of a rent charge & dieth wt-

Diuersitie.

out issue, here that which to him belongeth discendeth to the other parcener. & in this case the other parcener shal holde the lande charged because he cōmeth to the halfe by discēt as heire.

¶ Also if there be two iointenants in fee simple within one borough where the landes & tenements Gin the same borough be diuisible by testament, if the one of the said iointenants deuise that which to him belongeth by testament and dye, this deuise and legation is voide. And the cause is for that, that no deuise may take effect til after the death of the testatour which bequethed and deuised the same, & by his death al the land incōtinent commeth by the lawe to his fellow that suruyueth by the suruiuour which neither claimeth nor hath any thing in the lande by the deuise but in his owne right by the suruiuour after the course of the lawe, and for this cause such deuise is voide.

Deuise by testament.

¶ But otherwise it is of parceners seysed of tenementes diuisable in such case of deuise for the cause aboue remembred. Also it is cōmonly sayde, that euerie iointenaunt is seysed of the lande, that hee holdeth ioyntly, Pur my et per tout, that is, throughout and by all. And this is as much to say that he is seised by euery parcel and by al, which saying is true, for in euerie parcell and parte and throughout all the lands and tenements he is ioynthe seysed with hys fellowe. And therefore if the one iointenaunt make a feoffemēt to his companion, this is voide because he can make no liuery of seyson to him.

A grounde of the lawe.

Also if two iointenaunts be seysed of certayne landes in fee simple, & thone letteth that ẏ to hī belōgeth to a strañger for terme of xl. yeres and dyeth

Diuersitie.

byeth within the terme, in this case after hys death the lessee may enter and occupie the halfe to him letten during the saide terme though the lessee neuer had possession of it in the life of the lessour by force of the lease. And the difference betwene the case of the graunt of a rent charge & this case is this, that in the graunt of a rent charge by a iointenant the landes or tenements abide alwaye as they were afore without that, that any hath right to haue parcell of the tenementz but theyr selues, and the tenementz abide in such plite as they were before the charge: But where a lease is made by a iointenaunt to another for terme of yeres, incontinent by force of the lease the lessee hath right in the same lād that is to say, of all that that to his lessour belonged by force of the same lease during hys terme. And if the lessour in this case dye the other iointenant shall haue the rent or terme during the saide terme, because the reuersion is come to him by suruiuour. Finally if a ioynt estate be made of lande to the husband and wife and to the thirde person, in this case the husband and the wife haue not in the lawe in theyr right but the halfe, and the thirde person shall haue as much as the husband & the wife haue, that is to say, the other halfe.

Diuersitie betwene a graūt of a rent and a lease.

¶ And the cause is, for that the husbande and wife be but as one person in the eye of the lawe, as it is here in like case, as if estate bee made to two iointenauntes where the one hath by force of ioynture the one halfe, and the other the other halfe. In likewise wise it is where estate is made to the husbande and wife, and to other women, in this case the husbande and the wife

haue not but the third part & the other two mē the other two partes.

¶ Also if two or three together disseise another of lands & tenementes to their owne vses, then such disseisours be called iointenants.

More shalbe said of this matter touching iointenants in the next chapiter.

Tenaunts in common.

TEnaunts in cōmō (as I said before) be they that haue landes or tenementes in fee simple, fee taile, or for terme of lyfe, which haue such lands & tenements by seueral title, & not by ioint title, & none of them knoweth that which is seueral to him. And in this case they ought by the lawe before particion made betweene them to occupie such lands and tenements in common: or vndeuided to take the profits in commō. And because they come to such lands & tenements by seueral tytles, and not by one selfe ioint title, and their occupation & possession in the same is among thē in common, they be called tenaunts in common, or tenaunts pro indiuiso. As for example, yf a man enfeoffe two iointenaunts in fee simple, & the one of them alieneth that that to him beelongeth to another in fee, nowe the other iointenaunt & he to whom the alienatiō was made be tenaūts in cōmon, for ẏ they be seysed of such tenements by seueral titles, for the one cōmeth to the one halfe by the feoffemēt of the iointenāt, and ẏ other hath the other halfe by force of the first feoffement made to him and to hys first fellow, and so they be in by seuerall titles & by

seuerall feoffements.

¶ And it is to wit, that when it is said in any booke, that a man is seised in fee without more saying or addition, it shalbe vnderstand fee simple, for it shal not be vnderstand by such woorde in fee that a mā is seised in fee taile, except there be put to it such addition taile. Diffinition of fee onely.

¶ Also if three ioint enaunts be, & the one of them alieneth that which vnto him belongeth to another in fee, in this case the alience is tenāt in common with the other two iointenaunters. But yet the other two iointenants be seysed of the two parts iointly, & of these two parts the suruiuour betweene them holdeth place. Joyntenants.

¶ Also if there be two iointenaunts in fee, and the one geueth that, that vnto him belongeth to another in the tayle, the donee and the other iointenaunt be tenaunts in common. But if the landes be geuen to two men, and to the heires of their two bodies engendred, the donees haue ioint estate for terme of their liues, and if eche of them haue issue and die, their issues shal hold in common.

¶ Also if landes be geuen to six men, to haue and to holde the one halfe to the one and to his heires, and the other halfe to the other and to his heires, they be tenants in common.

¶ Also if a man seysed of certain landes enfeoffeth another in the halfe of the same lande without any speache of assignement or limitation of the same halfe in seueraltie at the time of the feoffement, then the feoffee and the feoffour shal holde their partes of the lande in common.

¶ And as it is of tenaunts in common of landes or tenementes in fee simple or fee taile, euen

so

Iointenants. so it is of tenauntes for terme of life. Therefore if two iointenantes be in fee, and the one letteth to a man that that vnto him belōgeth for terme of life, and the other ioyntenaunt letteth that which to him belongeth to another for terme of lyfe also, these two lessees bee tenaunts in common for terme of their liues.

Also if a man let lands to two men for terme of their liues, of which the one graūteth al his estate to another, then that other tenaunt for terme of life, & he to whom the graunt is made shalbe tenauntes in common duringe the tyme that both lessees be aliue.

Note if there be two iointenaunts in fee, and the one letteth that, that vnto him belongeth to another for terme of lyfe; the tenaunt for terme of life during his life, and the other tenaunt that did not let, be tenaunts in common. And vpon this case a question may rise as this. Let the case be that the lessour hath issue and dyeth, lyuing the other iointenaunt his fellowe, and lyuing the tenant for terme of life, the question is whether the reuersion of the halfe that the lessour hath shal discend to the issue of the lessour, or whether the other iointenant shall haue it by the suruyuour or no. And some haue saide, that the other iointenant shall haue the reuersion by the suruiuour, for as muche as when the ioyntenāts were iointly seised in fee simple, though one of them made estate of that, that vnto him belongeth for terme of life, and though he haue seuered the franketenemēt of that, that to him belongeth by the lease, yet he hath not seuered the fee simple.

Question.

But the fee simple abydeth to them iointlie as

it was

it was before. And so it seemeth vnto them, that the other iointenaunt (which survyueth) shall haue the reuersion by the survivour. But other haue thought the contrarie, and this is their reason, When one of the iointenants letteth that which vnto him belongeth to an other for terme of life, by such leale the franketenement is severed from the ioynture. So that the reuersion that is dependant vnto the same franketenement is severed from the ioynture. Furthermore if the lessor had reserued vnto him a percy vet vpon y leale, the lessour onely should haue the rent which is a proofe that the reuersion is only in him, & that the other hath nothing therein.

Also if the tenaunt for terme of life were impleded and make defaut after defaut, the lessour shalbee onelye hereuppon receyued to defende his right & not his fellowe, which proueth the reuersion of the halfe to bee onely in the lessour and so consequentlye if the lessour dye, lyuinge the lesser for terme of lyfe, the reuersion shall discende to the heires of the lessour and shall not come to the other iointenaunt by the survyvour after these many opinions, yet it is a doubt. But in this case, if the iointenaunt that hath the franketenement haue issue and dye, liuinge the lessour and the lesse, then it seemeth that the issue shall haue the halfe in his demesne as of fee by discent, forasmuch as the franketenement may not by nature of the ioynture bee annexed to a reuersion, and it is certaine that hee that letted was seised of the halfe in his demesne as of fee, and that none shall haue any ioynture in his franketenement. So that this shal discende to his issue.

Reserue

Quere

Releale

¶ If three tenaunts be, & the one releaseth by his dede to one of his fellowes al the ryght he hath in the lande, then hath hee to whom the releale is made the thirde parte of the landes by force of the releale, & he & his fellowe shal holde the other two partes iointly. And as to ỹ third parte that he hath by force of the releale he holdeth it with him selfe & his fellowe in common.

¶ And it is to wete, that sometime a dede of releale shal take effect to put the state of him that made the releale in him to whom the releale is made in cale aforesaid.

Also if a ioint estate be made to the husbande and wife and to a third person, & the third person releaseth his right that he hath to the husband: then hath the husband the halfe which the third person had, & the wife of this hath nothing. Contrariwise if the third person had released to the wife not naminge the husband in the releale, this shoulde the wife haue the halfe that the thirde person had, and the husband nothing of this but in right of his wife because such releale shal ensure to put the estate to him to whome it was made of al that, that belongeth to him that made the releale.

Againe in some cale a releale shal ensure & serue to put al the right that a man hath that made ỹ releaseth him to whom it is made. As a man beyng seased of certayne landes is disseised by two disseisours, if the persone disseised by his dede releale al his right to one of the disseisours, then he to whom the releale is made shal haue and holde al to him alone and put out his fellowe out of the occupation of it. And the cause is for, that the two disseisoures were seased by

Disseisours

wrong by them done against the law, and who one of them getteth by the release of him that had right to enter, this right resteth in him to whō the release is made, & in such plite as if hee that had the right had entred & entoffed him of the same. And the cause is, for that hee that before had an estate by wrong, hath now by the release a rightful estate.

Release by way of extinguishement.

And in some case a release shall enure & take effect by way of extinguishemēt, & such a release shall helpe the tenenaunt to whom the release was not made, as well as him to whom it is made, as if a man bee villeyed, & the disseisour maketh a feoffement to two men in fee, if the disseisee release to one of the feoffees in fee by his deede, then such release shall enure to both the feffees because the feffees have estate by the law, that is to say, by the feoffement and not by wrong don to any other.

A release shall enure to him in the remainder.

And in like manner if the disseisour make a lease to a man for terme of life, the remaynder over to another in fee, if the disseisee will release to the tenant for terme of life al his right, this release serueth aswel to him in the remainder, as to the tenaunt for terme of life. And the cause is for that the tenant for terme of life commeth to his estate by the course of the law, and for this cause the release shall enure and take effect by way of extinguishement of the right of him that hath released. And by this release the tenaunt for terme of life hath no greater estate then hee had before the release made vnto hym, and yet the right of him that releaseth is all vterly extinct and gone. Wherefore for asmuch as such release cannot enlarge y estate of the tenaunt

naunt for terme of life, it is reason that it shall serue him in the remainder.

Also if there be two parceners, & the one alyeneth his parte to another: the other parcener & the alienee be tenants in common.

Tenants in comen by title of prescriptiō.

Furthermore tenauntes in common may bee by title of prescription if the one and his auncestours or they whose estate hee hath in the halfe haue holden in common the same halfe with the other tenaunt that hath the other halfe & with his auncestors or them whose estate he hath as vndeuided, time out of minde.

Actions seuerall

And ye shal marke, that in some case tenantes in common ought to haue of their possession seuerall actions, & in some case they shall ioyne in one action, for if there be two tenaunts in common & they bee dispeyled, they ought to haue against the disseisour two assises & not one assise.

Assise

For euery of them ought to haue an assise of his halfe, because they were seised by seuerall titles, but otherwise it is by iointenaunces, for if there be .ii. iointenaunts, & they be disseised, they shall haue in al their names but one assise, because they haue but one ioint title.

Assise

¶ Also if there be three iointenaunts, of whom the one releaseth to one of his fellowes al the right he hath, and afterwards the other two be disseised of the whole, in this case they shal haue in both their names one assise of the two parties. And as to the thirde parte, hee to whom the release was made ought to haue therof an Assise in his owne name, because as to the third parte he is tenant in common.

Diuersities

Also as to sue actions that touche the realtie, there is a diuersitie betweene parceners that be

by diuers discents, and tenauntes in common. For if a man seased of certein landes in fee, hath issue two daughters and dye, and they enter into the landes as coheires, and eche of them haue issue a sonne and dye without partition made betwene them, so that the one halfe discendeth to the sonne of one parcener, and the other halfe to the sonne of the other, and they enter and occupy in cõmon, & be disseased, in this case they shall haue in their two names one assise, & not two assises. And the cause is though they cõe in by diuers discẽts, yet they be coheires & parceners.

Also if two tenaunts in common of certaine landes in fee, geue the same to another man in ꝑ taile, or let it to another for terme of life, yelding an annuitie or certaine rẽt, or a pound of Peper, or an hauke, or an hors, & they be seased of these seruices, & afterward al ꝑ rent is behynd, & they distraine for it, & the tenaunt maketh there re- Rescous. scous, in this case as to the rent & the pounde of Peper, they shal haue ij. assises, and as to the hauke & the hors but one assise. And the cause why they haue ij. assises as to the rent & pound of Peper is for that they were tenants in cõmõ by seuerall titles, & when they made a gift in the taile or leale for terme of life, sauinge and reseruing to them the reuersion, and yeldinge to hym certaine rent: this reseruatiõ is resident to their reuersion.

And because their reuersiõ is in common and by seuerall titles: euen as their possession was before the rent and other thinges which may be seuered, & which were to them reserued vpon the gyft or vpon the leas which be mey-

dent by the lawe to the reuersion, therefore such thynges to leuered be of nature reuersion.

Wherefore it behoueth that the rent & the pound of Peper which may be seuered to be then in cōmō by seueral titles. And of this they Plaint in all. shal haue ij. Assises, & euery of thē in his Assise shal make his plaint of the halfe of the rent & of the halfe of the pound of Peper. But of the hauk and the horse, which cannot be seuered they shal haue but one Assise, for it were an absurdue & a thynge inconuenient to take a plaint in Assise of the halfe of an hauke, or of the halfe of an horse, In like maner it is of the other rēts & seruices that tenaunts in common haue in grounde by diuers titles.

Personal actions. ¶ And ye shall understande that concerninge actions personals, tenaunts in commō ought to haue them iointly in al their names, that is to say of trespas, or of offences that touch their tenementz in commō, as of breaking of their houses, breaking of their closes, & pasturs, waisting & defoulinge of their grasse, cuttinge of their woods, & of fishing in their ponds, & such other, Damage. & they shal recouer iointly damage, because the action is in the personaltie and not in the realtie.

Tenāts in cōmō shal haue one act̄ of debt ¶ Also if tenants in common make a lease of their tenementes to another for terme of yeres yelding vnto them yerely a certaine rent, if ẏ rēt be behinde, they shall haue one action of debt against the lessee & not diuerz actions, because the action is in the personaltie.

Auowry. But in auowry for ẏ said rēt, they ought to be seuered because it is in ẏ realty as de Assisis.

¶ Tenaunts in common of chattels.

It

IT is to be knowen ẏ as there be tenauntes in cōmon of landz or tenements: so there be tenāts in common of possession & propertie of chattels aswell reals as personals. Of reals as if a lease be made of certaine landes to two men for terme of twenty yeres, & when they be thereof possessed, the one graunteth that, that vnto him belongeth during the terme to another, hee to whom the graunt is made, and the other shall holde and occupie in common.

¶ Also if two ioyntenauntes haue the ward of the bodie and of the landes of an heire within age, and the one of them grauñteth to another that, that vnto him belongeth of the same ward then he to whom the graunt is made, and the other that graunteth not, shal haue and holde it in common. Iointenants of a ward.

¶ Of chattels personals, as if two haue a ioint estate eyther by gift or by buying of an horse, or of an oxe, or such lyke, and the one of them graunteth that, that to him belongeth, here shall the grauntee and he that graunted not haue & possesse such chatel personall in common. And in such cases where diuers ꝑsons haue chatels reals or personels in commō & by diuers titles, if one of them dye, the other that suruyueth shall not haue his fellowes part by the suruyuour, but the executours of him that dyeth shal holde & occupie it w him that suruiueth in lyke forme, as the testatour did, or ought in his life forasmuch as their titles & rightz were seueral.

¶ Also in the case afore said, if two haue estate in common for terme of yeres, and the one doth

A writ de Eiectione firme.

occupie all & put the other out of his possession & occupation then shall he that is put out haue against thother a writte de Eiectione firme for the halfe. In semblable maner where two hold the warde of land or tenements during the nonage of a childe, if one shal put out the other of his possession, he that is out shal haue a writte de Eiectione custodie of the halfe, because these things be chatels reals & may be apporcioned & seuered. But no action of trespas lyeth for the one against the other (as for example. Quare clausum suum fregit & herbam suam conculcauit & consumpsit nor such like actiōs) forasmuch as eche of them may enter & occupie in cōmon. But if two be possessed of chatels personels in common by diuers titles as of an horse, or an oxe, or cowe, if ẏ one take it al to him selfe out of the possession of the other, the other hath none other remedy, but to take it againe frō him that hath done him the wrong, when he may see his time.

De eiectione custodie.

Trespas.

In like maner of chatels reals, which may not be seuered, as in the case aforesaide, where two be possessioners of a warde of the bodie of a childe within age, if one shall take ẏ child out of the possession of the other, the other hath no remedy by any action at the law, but to take the childe out of the others possession, whē he seeth his time.

Fourme of pleading.

Finally ye shall vnderstande that when a man in pleading and declaring his cause wyll shew a deede of feoffement made vnto hym or a gift in fee tayle or a lease for terme of life of any lands or tenementes, shall vse his termes in thys wyse and saye, by force of such feoffement

ment, gift, or lease was seysed.

But where a man will declare or pleade a lease or a graũt made vnto him of a chatel real or personal, then he shal say by force of which he was possessed.

¶ Of particion to be made by Jointenauntes and tenaunts in common inacted Anno. 31. H. 8. ca. 1.

AL iointenaunts & tenaunts in cõmon of any estate of inheritaunce in their owne rightes, or in the right of their wiues of any lands or hereditamẽts within this realme of Englãd, Wales, or ẏ marches of the same, shal & may be cõpelled to make particion betwene thẽ of ẏ same which they so hold as iointenaunts or tenants in cõmon by a writ de partitione faciend, to be deuiled in the chaũcery in like maner as coparceners are compelled to do, and the same writ to be pursued at the common lawe. And after such particion made euery of the iointenants & tenaũtes in common shal & may haue ayde of ẏ other: or of their heires, to thintent to dereigne the warrantie paramount and to recouer for the rate as is vsed betwene coparceners after particion made by the order of the common lawe.

Writ de ptici-patione fac.

Ayde prayed.

Item in the xxxij. yeare of king Henry ẏ 8. Cap. 32. It is further enacted that all ioyntenaunts and tenauntes in common which holde iointly or in common for terme of life, yere or yeres, or iointenaunts, or tenauntes in common where one or some of them haue estate for terme of life or yeares with other that haue estate of

inheritaunce of freeholde in any landes or other hereditaments shall bee compellable by writte of Partition to be purlued out of the chaūcerie vpon their cases, to make seuerance and partition of al such lands & hereditamts as they holde iointly or in common for terme of life or liues, pere or peres, where one or some of them holde iointly or in cōmon for terme of life or peres & other that haue an estate of inheritaunce of free hold. Prouided that no such partition nor seuerance, be hurtful to any person other then such as be parties vnto the saide partition their executours or assignes.

Of Conditions.

FOr asmuche as euerie estate is eyther pure or condicionall, it were not amysse to make some declaration of the nature & efficacie of conditions, wherefore ye shall vnderstand that of conditiōs, some be actuall conditions, & be called expresse conditions or conditions in deede, and other some be conditions in lawe which be called also in latin, conditiones tacite, siue cōditiones implicite, because they be secretly implyed by the law, and not expressed.

Diuision. ¶ Conditions in deede be such as be knit and annexed by expresse wordes to the feoffement lesse or graunt, eyther in writyng or without, as for example, if I enfeoffe a man in certaine landes reseruyng to mee, and to my heires so much rent yerely to bee payed at such a feast, and for defaut of payment that it shalbe lawful for me to reentre, this is a feffement vpon cōdi-

tion

cion of payment. And here ỹ not paiment of the rent shal dissolue & vtterly defete ỹ feoffemẽt, semblable it is of gifts in taile, leases &c.

¶ But if ỹ condition be, ỹ for defaut of paimẽt of the rent, it shalbe lawful for the feoffor to enter againe into the landes & to hold them till hee be contented & satisfied of the rent, this condition not performed doth not dissolue nor vndoe the feoffement but onely geueth to the feoffour an authoritie to retaine the landes (as it were by way of distres) til he haue leuied the arrerages of the rẽt. And ye shal wel marke & obserue that conditions be sometime made to be pfourmed on ỹ feoffees behalfe, & sometime on the feffours behalfe. On the feoffees behalfe, as when I enfeoffe you of landes or tenementes vppon conditypon that you shall doe such an act, as to paye vnto mee or myne heires such an annuell rent. Distres.

¶ On the feoffors behalfe as when I make a feoffement vnto you vppon condition that if I paye or cause to be paide vnto you before such a day such a somme of money, then it shalbe lawful for me to enter againe & retaine my landes in my former estate, In this case he that is the feffee is called tenant in mortgage, which is as much to say as dead gage, & it semeth ỹ ỹ cause whye it is so called, is forasmuch as it is doubtful whether ỹ feffor wil pay at ỹ day limitted & prescribed such summ? of money for ỹ redẽption of his landes or not, for if he doe not, hys title or interest on the lands thus gaged & oppignorate is vtterly extinct & gone without al hope of reuiuing. Tenants in mortgage.

¶ Ye shall also note, that if the mortgageour

dye before the day of payment, his heire may redeeme ỹ land very wel, euen as wel as his ancestor ỹ mortgaged the land might haue done, although there be no mention made of heires in the writting.

Also if when the money is lawfully by the mortgagedour or his heire tendred and proffered, and the feoffee refuseth to receiue the same, the feoffour or his heire may enter, and then hath ỹ feoffee no remedy for his money at the common lawe.

Condit̃ voide. We shal vnderstand also, that some cõditions be vtterly voide in the lawe, and of none efficacy vertue, or strength, as if a feoffement be made of landes in fee simple vppon condytion, that the feffee shal not alien or put away ỹ same to none other, this condition I say is voide, because the feffee is restrained of his whole power that the lawe geueth in such case vnto him, and which power and liberte, is in maner included in euery feoffement, yet I may abridge him of part of his power, as to condition with him that hee shal not alien the landes to such a person or such. But of giftes in tayle otherwise it is, for if I geue landes to a man & to his heires of his bodye lawfullye begotten vppon condition that he nor his heires shall alien the landes to none other personne, this condition is good and effectuall in the lawe, and if he or his heires contrarie to the condition do alien them, then the geuer or his heires may very well enter and retaine the landes for euer because this condition shal stand with the forenamed statute of Westminster lecondc which prohibiteth such alienations to bee made.

Gift in tayle vpõ condition.

Hither-

¶ Hitherunto haue I spoke of cōditiōz in dede, now wil I shew what be cōditions in lawe ẏ be annexed to any estates.

Estate vpon cōdic in lawe.

Know ye therefore, ẏ if the office of a Parker, steward, Constable, Bedell, or Bailife or such like office, be graūted to a man for terme of hys life, though there be no condition at al mencioned in the graunt, yet the lawe speaketh of condition in this case, which is that if ẏ partye to whom such office is geuen shall not execute all pointes apperteining vnto his office accordingly, by him selfe or his lawful deputye, it shalbee lawful for the grauntor to enter & discharge him of his office, & this condition is called a condition in law. There bee also three other maner of estates vpō cōdition, ẏ is to say, cōditiōs against ẏ lawe, conditions repugnant, & conditions impossible.

Conditions against the law.

¶ First estates vpō condition against the law be, as if a manne make a feoffement, gift, graunt or lease vppon condition that if the feoffours, donors, graūtours or lessours kil I. S. which is not the kinges enemye, or bourne his house, that thē it shalbe lawfull to the feffours, donors &c. to reenter, this condition is voide & the state is good.

And like lawe is if such conditions be to bee performed of ẏ part of the feoffee, grauntee &c. But if the case be ẏ a lease for terme of yeres be made of land vpon condicion that if the lessee kil I. S. ẏ then he shal haue fee simple, although ẏ he in this case performe ẏ cōdition, his estate is nothing thereby enlarged because ẏ conditiō is against the lawe.

Also ye shall vnderstande that where an obliga=

Obligation.

ligation is endorsed ꝟ a cōdition the which is against ẏ law: both the obligation & also & condition be clerely voide in the law.

Conditions repugnant

Estates vpon conditions repugnaunt be as if a feoffemēt or a gift in taile be made vpon condicion ẏ the feoffee or donee shall take no profitte, or shall do no wast, & such other like, such conditions be voide, & the state good & effectuall in the lawe notwithstanding.

Also if a lease be made for terme of lyfe vppon condition that he shal do fealty, ẏ is as a voyde condition.

Likewise it is if a man ẏ hath nothing in the maner of sale gaūteth a rent charge goynge out of the same vpon condition, that the person shal not be charged, this graunt is good, & the condicion is voide.

Conditions impossible.

¶ Estates vpon conditions impossible be as if a feffement be made vpō condition, ẏ if the feffee goeth not through the sea on foote to Caleis in one day, thē it shalbe lawful to the feffour to reenter, this is a frustrate & voide condition, & yet the estate is good.

Like law is of a lease made for terme of yeres &c. or an obligation with a condition impossible vt supra, the obligation or lease is good and the condition void to al purposes.

¶ An act how straungers shal take auantage of conditions made An. 32. H. 8. ca. 34.

IT is enacted that as well persons, which haue or shall haue any gift or graunt of the kinge by his letters patents of any landes personages, tithes, or other hereditamentes, or any reuersion of the same whych dyd belong

belonge to any monastery or other ecclesiastical house dissolued, or otherwise come into ỹ kings handes since the iij. day of February in the 27. yere of our soueraigne lord king Henry the 8. or which at any time heretofore did belonge to any other person, and after came into the kings hādz as also al other persons beinge graūtees or assignees to the kinge or to any other personne, their heires executours, successours, and assignees shal haue like auantage against the lessees, and their executours, administratours and assignes by entre for not payement of the rent, or for doyng wast or other forfaiture, and also shall haue the same auauntage by action onely for not performinge of other conditions couenaunts or agrements conteyned in the indentures of their leases or graunts against the said fermours, and graūtees, their executours, administratours, & assignes, as the saied lessours or grauntours, them selues might haue had at any time. And againe mutuallv and on the otherside the saied fermours, & graūtees for terme of yeres, life, or lives, their executours, administratours and assignes shal haue like aduauntage against thē for any condition couenant or agreement contained in the said indenture, as they might haue had against their said lessours and grauntours, their heires, successours, al benefits & aduantages of recoueries in value by reason of any warrantis of deede or in lawe, by voucher or otherwise only except.

Prouided that this act shall not extende to charge any person for breache of any couenaunt or condition compiled in any such writynge, but for such as shalbe broken and not perfourmed

med after the first day of September next comming and not before.

¶ Liuery of seasō, and Attornement.

IN al feoffementes, giftes in taile, leases for terme of life, or for terme of an others lyfe, of landes or tenemēts there can be no alteration or translmutacion of possession by ye auncient lawes of this realme, vnlesse there be a certeine ceremony adhibited & solēpnised in the presence & sight of neighbours or others, which ceremony is called liuery of seisen.

The maner of liuery of seisen

¶ And ye shal vnderstād, that this ceremonye of liuery of seisen is done when the feoffor, donour, lessour or their deputy cōmeth to ye neighbour solemnly to the landes or tenementes, and they put the feoffee, donee, or lessee in possessiō of the said landes or tenements by deliuering vnto him a clod of earth, or the ringe of the doore, or some other thing in the name of seysen, and for this selfe cause this ceremony of lawe is called liuery of seisen, that is to say, a tradicion or geuing of seisen.

Diuersity betwene possessiō & seisin.

But this ceremony is not required in leases for terme of yeres, or in leases at will, forasmuch as the lessour in such leas remaineth still seysed, & the lessee onely hath possession without & the seysen, and therefore the termes of the lawe be ye such a manne is possessed, where as in feoffementes, giftes in taile, and leases for lyfe, hee is called seised.

Where

Wherefore if a feffement or lease for lyfe bee made of landes or tenements, & before that the lyuery of seisin be made the feoffour dyeth, the heire of the feoffour shal haue the lands p̄ iuni=mū ius, that is to say, by the rigour of the law, notwithstanding that the feoffee hath paied to the feoffour the price of the land, & although the feoffee be in possessiō, but otherwise it is ī a leas for terme of yeres.

A like ceremony is vsed whē a rēt charge, rēt seruice, rent in grosse, auowson in grosse, a vil=laine in grosse, cōmon in grosse, cōmon for beastz certaine estouers, & such other things as pas by way of graūt, be graūted, for it is no ful & per=fit graunt til it be consignat & sealed as it were with the ceremony of atturnement. Atturnement

This atturnement is nothing els, but when the tenaunt of the land out of whych a rent is graunted, or out of which a rent is graunted, do make some euident signification & tokē that he accepteth ẏ persō to whō the graūt is made to be in the same respect vnto him ẏ the graun=tour was. As for an example if the tanāt of the lād after he haue heard of the graūt, cōmeth to ẏ grauntee that is to wit, to the person to whom the graunt was made, & say in this wise, or in lyke effect. How atturne=ment shalbe made.

I agree me vnto the graunt made vnto you by such a man, or I am wel apaide & contented of the graunt that such a man hath made vnto you. But the most vsual & frequent forme of at=turnemēt is to say. Sir I atturne vnto you by force of the said graūt, or I becōe your tenaunt, or to deliuer vnto the graūtee a peny, or a halfe peny by way of atturnement.

Also

Also if a man make first one graunt to one person, & after another to another person, that graunt shal stand to which the tenant will atturne although it be the latter graunt.

And ye shal note, that if a man be seased of a manour, which is parcel in demeane, and parcel in seruice, and doth alien the same manour to another, vnleise the tenaunts of the maner do atturne, the seruices shal not passe, onely tenãts at wil excepted, for it nedeth not to cause them to attourne.

Diuersitie. More furthermore there is a great difference betwene geuing a peny in name of seysin, and geuing by way of atturnement, for when yt is geuen by the tenant to the graũtee in the name of season, it doth not onely implye an atturnemẽt but also it geeueth him such a seysin, that if the rent afterward were behynde and not payed, he may now vpon the season of the peny after a lawfull distres taken and after rescous made, bring an assise of nouel disseisin, whereas if it were geuen onely by way of atturnement, hee could not bring the Assise, but his writ of rescous onely.

Assise.

Writ of rescous

Also ye shal vnderstand, that where landes be deuisable by testament, by the custome of any auncient borough, or citie, if the reuersion of any landes bee by testament bequethed to a man in fee, and the testatour, which wee call the deuisour dyeth, the deuisee, that is to wete, he to whom the deuise was made, hath forthwyth the reuersion in hym without further ceremony of attournement. Likewyse it ys if a man by testament doth beequeth a rent charge that hee is seased of, or a rent seruyce, there nedeth

Atturnemẽts

deth none atturnement at al.

Yf two iointenants be of lande, & ẏ lord grauntеth ẏ seruicez to another, if one of ẏ iointenāts atturne it is enough. Note acquite.

Finally, if a lease be made for terme of lyfe, the remainder to another in taile, the remainder ouer to the right heire of the tenāt for terme of life, if in this cas the tenaunt for terme of lyfe will graunt his remaynder in fee to another by his dede, this remaind passeth forthwith, without any atturnement, for if any atturnement were requisite it shoulde be made of the tenaunt for terme of life, which in this case is the grauntor him selfe. And in vaine it is that the grauntour shoulo be enforced to atturne sith an atturnemēt is adhibited & had to none other purpose then to haue the consent & agreemēt of ẏ particuler tenaunt, to thintēt that it may appeare, that he hath notice & knowledge of this graunt, but here where the particuler tenāt hym selfe is the grauntour, an atturnemēt were superfluious, & more then neded.

Note furthermore that where there is a lord & tenaunt, and the tenaunt leaseth his tenemētz to a womā for life, the remainder ouer in fee, the woman taketh a husband & after the lord grauntеth the seruices &c. to the husband, in this case during the couerture the seruices be put in suspence. But if the wife die liuinge the husband, the husband & his heires shal haue the rent of them in the remaindr &c. And in this case there nedeth no atturnement by word because ẏ husbād that ought to atturne accepteth the graūt of the seruices the which acceptance is an atturnement in the lawe. Suspence.

Hyther=

Of seruice.

HYtherunto haue I briefely touched & ouerrunne the sunory kindes & formes of estates. Now forasmuch as there is no tenure but hath vnto it some seruice knit & annexed, it were very necessarye to declare how many kinds of seruicez there be, & what seruice is due to euery tenure. For the knowledge hereof ye shal understād that ye principal & most cōmō kind of seruice that the tenāt oweth to his lord is called knightes seruice.

Knyghtes seruice.

KNyghtes seruice includeth homage, fealty, and for the most part escuage, and wholoeuer holdeth his lāds by knyght seruice is bound by ye law of this realme to doe vnto his lord homage & fealty & to pay for the most part escuage, when it shalbe assessed by auctoritie of parliamēt, as hereafter more plainely shalbe declared.

Homage is the most humble and reuerēt seruice that a man of free estate or condition cann doe, for when the tenant shal doe homage to his lorde, the lorde shall sytte, and the tenaunt shall knele downe before him vpon both knees, holding his hands betwene his lords hands & say in this wise, I become your mā from this day foreward, of lyfe and of membre, and earthely honour, and to you shalbe faithfull and true, and faith to you shall beare for the landes that I claime to holde of you, sauinge the faith that I beare vnto our soueraigne lorde the king, and then the lorde so syttinge shall kysse hym. But if an ecclesiasticall person, which by his order

Homage.

How ye tenant shal doe hom̄.

and

and profession hath addicted himselfe to the seruice of God in especiall, shall doe homage to his lord, he shall say: I do to you homage & shalbee to you faithfull & true, & faith to you shal beare for the tenements that I hold of you, sauinge the faith which I owe to our soueraigne lorde the kinge. What a religious person shal say when he doth homage.

Also when a woman not maried, doth homage to her lorde, she shall not say: I become your woman, for it is not conuemēt that a woman should be the woman of any other then of her husbande that shee shal marye, but shal say euen as the ecclesiastical person saith, I do vnto you homage &c. What a woman shal say.

And if perchaunce a man holdeth sundry lādes & tenements of sundry lordes, & euery of thē by knights seruice, then in the end of his homage making, he shall say, sauing the faith ꝑ I owe to our soueraigne lord ꝑ king, & to mine other lordes.

And none is boūd to doe homage to the lord vnles it be such a tenant as hath in the tenancy an estate of fee simple, or fee taile, either in hys owne right, or in the right of another.

¶ For if a woman haue landes or tenements in fee simple or fee taile, which shee holdeth of her lord by knightes seruice, and taketh an husbande and hath issue, in this case the husbande in the life of his wife shall doe the homage, because he hath a title to haue the landes by the curtesy of England, ꝑ he ouerliue her, and also he holdeth them nowe in his wyues right, yet before issue had betweene them, the homage shalbee made in bothe their names. But ꝑ the woman dye before any homage made What tenant shal doe homage.

in her life, and the husband in her life, and the husbande keepeth still the landes as tenaunt by curtesie, nowe hee shal not doe homage to hys lord because he hath nowe an estate but for terme of lyfe.

Fealtie. ¶ Fealtie, is as much to say as a fidelitie, or faithfulnes, in doing whereof the tenaunt shall hold his hand vpon a booke, and say thus.

Howe a tenãt shal do fealtie. Heare you this my lord, I to you shalbe faithful and true, and faith to you shal beare for the landes and tenementes which I claime to hold of you, and duely shall doe to you the customes & seruices which I owe to doe you at the termes assigned as me helpe god and his saints.

Diuersitie betweene homage & fealtie. And then he shal kysse the booke, but he shal not kneele as he that doth homage, nor do such humble or reuerent seruice, as is before declared in homage.

¶ And ye shal obserue that homage can not be done but to the lord him selfe, where as ỹ steward of the lordes court or the baylife maye take fealty for the lorde. Also tenaunt for terme of life shall do fealtie, but homage, as I said, he cannot doe.

Escuage. ¶ Nowe as concerninge escuag, that is to say the seruice of the shylde, ye shall vnderstande, that he that holdeth his landes by escuage, whē the kinge maketh a voyage royall into Scotland for the subduyng of the Scottes, is bound to bee with the kinges maiestye by the space of xl. dayes wel and conuenientlye arraied and appointed for the warre. And he that holdeth hys lande but by the moitie of the fee of knightes seruice, is bounde by the force of his tenure to be with the king by the space of xx. dayes, and

so

so proportionably according to the rate & quantitie of his tenure.

¶ But nowe to our institute and purpose, after this voiage royall into Scotlande, in which the king goeth in person, and after the retire in to Englande againe, a parliament is wonte to be summoned, in which shalbee prescribed and assessed what euery person that holde his lande by homage, and went not with the kinge neyther by him selfe nor by his deputye, shall pay to his lorde in satisfaction of hys not seruynge, and accordynge to the taxation herof euery tenãt shal pay to his immediate lorde whether it be ỹ kinge or other after the rate and portion of his tenure, if hee holde by an whole fee, hee shal pay the whole escuage, if by a moitie, the halfe, if by the fourth part of a fee, the fourth parte &c. and thys money thus assessed is called scutage or escuage, for which the Lorde to whome it is due, may very well for the non payment therof distraine. Parliament. Distresse for Escuage.

¶ But here it is to be noted, that some tenants by custome vsed time out of mynde are bounde to pay but the moitie, or the thirde parte of that which shalbee assessed and limited by act of Parliament.

¶ Yea, and the custome is in some place, that to what summe of money so euer Escuage is assessed, the tenauntes shall pay neuer but such a certayne summe of money, and thys kinde of escuage is called Escuage certayne, that is to say, where escuage is assessed by the parliament, to a more or lesse summe the tenant to paye to his lorde .v.s. and no more nor no lesse &c. such a tenure is called Socage tenure, & not knightes Escuage certaine.

seruice, where as the other is called escuage vncertaine.

Escuage incertaine.

¶ Finally ye shal vnderstand, that escuage vncertayne is alwaies adiudged to bee knightes seruice, and draweth vnto it warde, mariage, and relefe, but escuage certaine is no knightes seruice but is of the tenure of socage, as shalbe hereafter more amply shewed.

Of warde, mariage, and relefe.

EVery knightes seruice draweth vnto it warde mariage, and relefe, wherefore it is now right expedient somewhat to entreat of them.

Warde

¶ Ye shal therefore be admonished, that when the tenaunt which holdeth his landes by knightes seruice dyeth, his heire male beinge at that time within the age of xxj. yeres, the lorde shal haue the warde, that is to saye, the custody or kepinge of ỹ landes so holden of him to hys owne vse & profite, till the heire commeth to the ful age of xxi. yeres. For ỹ lawe here presumeth that til he come to this age, he is not able to doe such seruice, as is of this tenure required.

Mariage

Furthermore if such heires be vnmaried at the time of the death of ỹ tenant, then the lorde shal haue also the warde and the bestowinge of the mariage of him.

The ful age of a woman

¶ But if a tenaunt by knightes seruice dye his heire female beinge of the age of xiij. yeres or aboue, then the Lorde shall haue the warde neyther of the lande ne yet of the bodie of such an heire, and the reason hereof is, because the woman of that age may haue a husbande able

to doe

to do knights ſeruice, that is to ſay to wait vpon the kings maieſties perſon, when he auaunceth into Scotland with his army royal.

¶ But if ſuch a heire female be within the age of xiiij. yeres, and not maried at the time of the death of her auncestour, then the lorde ſhal haue the warde of the lande holden of him, till ſuch heire female come to ỹ age of xbj. yeres by force of an act of parliament in the ſtatut of Weſt. the firſt Cap. xxij.

¶ Note that there is a great diuerſitie in the lawe, betweene the ages of females and of males, for the females haue theſe many ages appointed by the lawe. Firſt at vij. yeres of age the lorde her father may diſtraine his tenauntes for ayde to mary her. Second at ix. yeres of age, ſhee is doweable. Thirdly at xij. yeres ſhe is able to aſſent to matrymony. Fourthly at xiiij. yeres ſhe is able to haue her land, and ſhalbe out of ward if ſhee bee of this age at the death of her auncestour.

Diuerſitie of age.

Age of a woman.

¶ Fiftly, at xbi. yeres ſhe ſhalbe out of warde though at the death of her auncestour ſhee were within age of xiiij. yeres

Sixtly, at xxi. yeres ſhe is able to make alienations of her landes or tenementes, where as the man hath but two ages, the one at xiiij. yeres to haue his landes holden in ſocage, and to aſſent to matrimony, the other at xxj. to make alienations.

The age of a man.

We ſhall vnderſtande that by the ſtatute of Merton the firſt Chapiter, it is enacted, that if in caſe that lords do mary their warde to villaynes or otherwhere in diſparagement, if ſuch heires ſoe maried bee within the age of xiiij.

yeres or of such age that the said warde cannot consent to the mariage, then if the frends of this heire complaine and feele them selues greeued with this vnmete mariage, the next of kinne to the heire, vnto whom the heritage cannot discende may enter into the landes and put out the lorde, which is gardeine in chiualrie, and if the next kinsman will not thus doe, another kinsman of the infant may doe it, and shall take the issues & profits to the behoue & vse of the heire, and shall yelde accompt therof vnto him when he commeth to his ful age.

Accompt geuinge.

Diuers disperagements

¶ Also there be diuers other disperagementes which be not expressed in the said statute, as if the heire being within age of cõsent, & in ward be maried to a decrepit personne, or cripple, as to one that hath but one foote, or one hande, or that is a deformed creature, or hauinge any horrible disease or infirmitie. All these and such like bee disperagements.

But here also ye shall vnderstande, that it shall be saide no disperagement, vnlesse the heire be so maried when hee is within age of discretion, that is to say, within the age of xiiij. yeres, for if he be of that age or aboue, and alloweth to such mariage, it is no disperagement, neither shal the lord for such mariage lose his warde, because it shalbe reputed & assigned to the folye of ỹ heire beinge of age of discretion, to consent to such mariage.

¶ Howe if the lorde, then beinge gardeine offer to the heire beinge in his warde a conuenyent mariage without disperagement, and the heire refuseth it as hee may at his choise and election very well do, then the lord shal haue the

the

Value of marriage.

ualue of the mariage of ſuch heire whē he commeth to his full age. But yet if hee marie him ſelfe being ſo in warde againſt the will of hys gardeine, then he ſhall pay the double ualue by force of the ſtatute of Werton before remēbred.

Double value of mariage.

¶ And ye ſhal note, that if landes holden by knightes ſeruice deſcend to an infant or childe within age from his mother or from any of his auncestours his father being yet aliue, in thys caſe the lorde ſhall not haue the mariage of hys heire, for during the life of his father, the ſonne ſhalbe warde to no man.

One ſhall not bee warde lyuing his father.

¶ Finally, it is to be knowen that he which is gardeine in chiualry in right, may after he hath leyſed the ward, graūt the ſame other by deede or without deede to another man, and then hee to whom ſuch a graunt is made, is called gardeine in fait.

Relicke.

Now as touching relicke, ye ſhal knowe that if a man holde his lande by knights ſeruice and deyeth, his heire being of full age (the full age of the male is xxj. yeres, of the female xiiij.) then the lorde of whom the lande is holden ſhall haue of the heire relicke.

¶ Note ye that all Erles, barons, or other the kinges tenauntes holding of him in chiefe by knightes ſeruice die, if at the time of his death his heire be of full age, that is to ſay xxj. yeres he ought to pay the olde relicke for his enherytaunce, that is the heire or heires of an Earle, for an whole Eareldome one hundred pound. The heire or heires of a Baron for an whole Baronny one hundreth markes. The heire or heires of a knight one hundreth ſhillings, & hee y hath leſſe ſhall geeue leſſe accordinge to the olde cuſ-

tome of fees, like lawe is obserued of all other that holde of any other their lordes immediate, vt supra.

¶ Also a man may holde landes of a lorde by two knightes fees, and then the heire being of ful age at the death of his auncestour, shall pay to his lord for relefe x. poundes.

Seruice of castel garde.

Ground in the lawe.

E shal vnderstād that a mā may hold by knights seruice & yet not holde by escuage, nor shal pay any escuage, for he may hold by castel garde ꝑ is to say, by seruice to kepe a tower of his lordes castel, or some other place, vpon reasonable warning, when his lorde heareth that enemies will come, or be alreadi come into England.

¶ This seruice is also knights seruice, & draweth to it ward, mariage, & relefe, as in all cases the common knightes doe.

Of grand sergeantie.

There is also another kinde of knights seruice which is called grand sergeantie, that is where a man holdeth his lands or tenemētes of the king by such seruice as he oweth in ꝑper ꝑson to do, as to beare ꝓ baner of our soueraigne lord the king or his seeare, or to conduct his host, or to be hys marshal, or to be the sewer, caruer, or butler, at ꝓ feast of ꝓ Coronation, or to be one of the chamberlaines of the receipt of his eschequer, or to do like seruice to the king in proper persone, such

such maner of seruice I say is called graunde sergeantie, that is to say, a great or high seruice & the cause why it is so called, is because it is ỹ most honorable and most worthie seruice that is, for he that holdeth by elcuage, is not appointed by his tenure to doe any other more speciall seruice then another is bounde that holdeth by elcuage, but he that holdeth by graund sergeantie, is bounde to doe some speciall seruice to the king. The moste high seruice.

¶ Also if he that holdeth of the king by graūd sergeantie dyeth, his heire beinge of full age, then the heire shall pay to the kinge for relefe not onely it is as he that holdeth by elcuage shall do, but more ouer the clere perely value of those landes & tenements which hee so holdeth of the king by graund sergeantie. Relefe of the tenāt by graūd sergeantie.

¶ Furthermore ye shal obserue that in ỹ marches of Scotlande, some men holde of the king by coynage, ỹ is to say, by blowinge of an horne to the entent to warne the men of the countrey when they heare that the Scots or other their enemies be comming or be already entred into England, which seruice is also a kind of graūd sergeantie. Tenure by coynage.

¶ Graunde sergeantie therefore is as much to say in Latin, as magnum seruitium, that is to say a great or high seruice, like as pety sergeantie is called parvum seruitium, that is to say a litle or small seruice. Diffinition of sergeantie.

But to reuert againe to the matter, ye shall note that if any tenant holdeth of any other lord then of the kinge by such seruice of coynage, though it is no graūd sergeantie, but yet neuertheless it is knightes seruice, & draweth to it, warde, mariage,

riage and reliefe, for this is a rule infallible that none can holde by graunde sergeantie but of the kinges owne maiestie.

Rule in the lawe.

¶ Finally ye shall understand ✠ al they which holde of the king by this seruice called graunde sergeantie, do hold of the king by knightes seruice, and by vertue of this tenure the king shall haue of them warde, mariage and relefe. But Escuage, yet he shall not haue of them, vnlesse they holde by escuage of him by expresse special wordes.

Petite sergeantie.

Petit sergeantie is Socage in effect.

TEnaunt by petite sergeantie is he that holdeth his land immediately of our soueraigne lord the king by this maner of seruice to pay to the king yearely eyther a Bowe, a Speare, a dagger, a paire of Gauntlets, a paire of spurres of Golde, a Shaft, or such other small thinges appertaining to the warre, and the seruice is in effect but socage, because that such a tenaunt is not bounde by his tenure to go ne doe anie thing in his owne proper person, touching the warre but only to render and pay yearely certaine things to the king as a man ought to pay a rent. Wherefore this seruice of petit sergeantie is no knightes seruice, but yet ye shall note that a man cannot holde neyther by pety sergeantie neyther by graund sergeantie, but of the king onely.

¶ Homage auncestrell.

TEnaunt by homage auncestrel is hee which holdeth his lande of his lord by homage and both hee and hys auncestoures, whose heire hee

hee is, haue holden the same lande of the same lord, and of his auncestours time out of minde by homage, and haue done vnto them homage and this is called homage auncestrel, by reason of the long continuance which hath bene by title of prescription as well concerning the tenaunce in the bloud of the tenaunt, as concerning the lordship in the lorde. And this seruice of homage auncestrel draweth vnto it warrantie, (that is to say) if the lorde which is nowe in life hath once receiued the homage of his tenaunt, he ought to warrant the same tenaunt to what time so euer he shalbe impleaded or sued, for such landes so holden of him by homage auncestrell. Warranty because of homage auncestrel.

¶ Moreouer such seruice of homage auncestrel draweth vnto it acquitall, that is to say the lord ought to acquite the tenaunt against all other lordes that can demaunde any maner of seruice of the tenaunce. Acquitall.

¶ Wherefore if in this case the tenaunt which holdeth by homage auncestrell, be impleaded of his landes, and vouche, or calleth his Lorde to warranty, who commeth in by procelle, and demaundeth of the tenaunt what he hath to vouche him to the warrantie, and the tenaunt sheweth howe hee and his auncestours whose heire he is, haue holden his landes of him & of his auncestours tyme out of minde, surely the lorde if hee cannot denie this, and if he haue receyued the homage of such a tenaunt, is bounde by the lawe to warrant him his land, so that if the tenaunt lose his landes in defaut of the lord thus vouched, that is to say, called to warrantie, hee shall recouer against him as much in Voucher.

value

value of these landes and tenements which the lord had at the time of calling to warrantie or any time after. But if ỹ lord neuer receiued the homage of his tenaunt, then he may verie well when he is thus vouched disclaime in the lordship or seigniory, and so put out the tenãt of his warranty, where ye shal note that in euery case where the lord disclaimeth in his seigniorie in court of recorde, his seigniorie or lordship is extinct, & the tenaunt shal hold from thence forth of the nert lord to him that thus disclaimed.

Disclaime.

¶ Thus ye perceiue that homage auncestrel is not but where as is a long continuance, as well in the bloud of the tenant in respect of his tenãcie, as in the bloud of the lord in respect of hys seigniorie. Wherefore if the tenant do once alien his landes to another, although he purchase the same againe, yet he shal not hold any longer by homage auncestrel because of this discontinuance, but shal holde it nowe by the vulgare and accustomed homage.

¶ Of liueries.

WHen one dyeth which helde of the kynge by knyghtes seruice in capite, that is to say in chiefe, his heires beinge within age, the kyng (as before is declared) shal haue the ward and custodie: as well of the landes as of the bodie, that is to wete, the mariage if he bee vnmaried. But if the heire be of full age at ỹ time of the death of such auncestour, yet shall the kynge by his prerogatiue royall haue primer seyson of all the landes, tenementes, and other here-

Tenants in chief of ỹ king.

Primer seisin.

hereditaments whereof such his tenaunt was seised in his demeine as of fee. And if such an heire will entre into his landes when hee commeth to his full age before he sue his liuery, and receiue seisin by the kig, no freehold shal accrew nor growe vnto him but he shalbe deamed an intruder in the kinges possession, yea and if he dye so seased in the meane time, his wife shall haue no dower of such landes, wherefore it behoueth in any wise, that such heire aswell male as female comming to ful age before he or shee enter into their lande, to sue liuery. The manner and forme whereof according to the act of parliament lately promulgated and set forth I entend briefly to recyte.

Intrud of the kinges possession.

How heires ought to sue their liueries, enacted xxxiij. Henrici. viij. Cap. xxij.

NO person or persons hauing landes or tenementes aboue the yerely value of x.li. shal haue any liuery before inquisition or office founde before the escheatour or other commissioner by vertue of the kynges writ of Diem clausit extremum, or commission directed out of the Chauncery or other courtes hauinge auctherytye to make such a writt or commission wherby shall not passe out of the same but by warraunt, or bill assigned, and subscribed by the maister of wardes or liueries, the surueyour, attourney, and receiuour of the sayed Court, or iij. of one of them, to be directed and deliuered to the Chaunceler of England, or to any other chaun-

Writ of Diem clausit extremum.

celer

celer or officer hauynge power to awarde such writtes, and for the writinge and sealigne of the same shalbe paied of the accustomed fees. But if the lands excede not the said yerely value of v.li. then they shal pay for the seales of euerye such writt or commissyon viij.d. and for the writinge vj.d. and not aboue.

¶ And the inquisitions and offices hereupon found shalbe retourned by the saied escheatours or commissioners into the same court frō whēce the writt or commission was awarded, whych done the clerkes of the petye bagge shall receiue the same offices and make a transcript thereof to the said Maister of the wardes and liueries. And then the saied maister and the surueyour, attourney and generall receyuour or three of them, whereof the maister or surueyour to bee one, shall couenaunt and indent wyth such persons for their liuery of the castels, manours, lordshippes, landes, tenementes and heredytaments comprised or not comprised in such offices and shall make and sett the rate and pryce of the same, and appoint the dayes of payment thereof by obligation to bee taken for the same to the kinge.

¶ And euery bill, for any speciall or generall liuerie assigned, by the handes of the saied maister, surueiour, attourney, receiuour, or three of them, wherof the maister, or surueiour to be one, shalbe a warrant sufficient to the lorde Chaunceler, or other officer, hauinge power to passe liueries vnder any of the kynges seales accordingly. In which case the clerkes of the petye bagge or other clerkes, by whom the lyueries be written, shal receiue as well for thē selues as

for

for other such fees as hath bene accustomed.

¶ Item euery person may sue at his pleasure a general liuerye for any maneurs landes, tenements, rents, reuersions, remainders, or other hereditaments, whereof the clere yearely value shal not excede xx. li. Prouided that an office bee thereof founde, and a warrantye first obtayned of the sayed maister and others as is aforesaied: General lyuery.

¶ And where such general liuery is sued, yf the landes excede the yearely value of v. li. they shall pay for the seale xx. s. viij. d. and all other fees accustomed as afterwarde shalbe declared. But if they excede not the yerely value of v. li. they shal pay but these fees followig, that is to sey, for the seale of the liuery xij. d. To the clerkes of the petye bagge for the writinge, and the inrollynge xx. d. For the respect of the homage in the Hanaper, eyght pence. To the lord great Chaberlaine twenty pence. To the mayster of the Rolles xx. d. And the clerke of the liueries for the warrant and inrollynge of the liuery xx. d.

¶ Item no person or persons shal pay in the chequer or any other courts for the respect of homage for any landes or hereditamentz not exceding the yearely value of v. li. aboue viij. d. And for entringe thereof and warrant of atturney aboue iij. d. Respect of homage.

¶ And the value of such landes and hereditamentes not exceadinge the yearely value of xx. pound, shalbee taken as it is lymitted in the offices founden therof except by the examinatiõz and certificat of the saied maister Surueyour, atturney, & receiuour, or thzee of them as it shal

otherwise

otherwise appeare and be declared in any of the kinges courts.

Paine of forfaiture.

¶ Also no Escheatour shal sit onely by vertue of his office for inquiry of the tenure title or value of any landes or other hereditamentes holden of the king being of the yearely value of v.li. or aboue, without the kinges writ to hym directed, vpon paine to forfait v.li. for euery tyme he shall so doe. Neyther shal he take for the finding of any office of lands not exceding the yerely value of v.li. aboue xv.s. that is to say vj.s. viij.d. for his owne fee, & iij.s. iiij.d. for the writting of the office.

Fees of an office.

¶ And for the charges of the iury iij.s. And for the officers that shal receiue the offices in any court of record vj.s. vpon paine that the escheatour doing otherwise shall for euery tyme forfait v.li. And vpon like paine the officers of euery court of record where such inquisitions shalbe returned, being offered vnto them, within one moneth next after the finding thereof, shall receiue the. The one moitie of al which forfaitures to be to the kinge, & the other to the party that wil sue for the same &c.

¶ And they which hereafter shalbe in case to sue liuery, whose landes and tenements excede not the yerely value of v. li. may lawfully sue forth that generall liuery by warraunt had frō the saide courts as is aforesaid, although none other inquisition be thereof hadde nor certified, payinge neuerthelesse the fees aboue remembred.

¶ Finally euery persō shal sue forth his patent for his liuery, within three monethes next after the assignement of his byl, or els his bill

assigned

assignes to be voyd & of none effect.

¶ Hereafter ensueth the fees accustomed of the general liueries.

¶ First to the clerke of the pety bagge for the respect of homage & fealty ye writing & inrolling xiiij. s. ij. d. To the lorde great Chamberlayne xl. s. To the maister of the rolles. iij. li. To the clerkes of the liueries for writynge of the Indentures and obligations xx. s. beside counsell.

The fees of the speciall lyuerye accustomed to be payde be these followinge, that is to say for the signet iij. li. x. s. for the priuie seale xxx. s. for the great seale xlij. s. viij. d. To the clerkes of the pety bagge xl. s. To the maister of the lyueries clarke xl. s. for the inrolment of ye knowledge of thendenture xij. s. To the lorde greate Chamberleine of Englande xl. s. for ye writ of allowãce for the same liuery x. s. vi. d.

¶ And note ye ye somtime in especial cases the fees be more, & sometime lesse, as the case & matter doth require.

Hytherunto haue we briefly touched al kinds of knightes seruice, and thinges incident to the same. Now wil we with like briefenes declare thother kindes of seruices which commonly be cõprised vnder the general name of socage. For al lãds or tenements either ar holdẽ by knightes seruice, or else of socage tenure, or at the least way of the nature of socage tenure, which in effect ar al one.

¶ Wherfore first we shal define what socage is in ye pper signification, which done, we shal puse the other kinds of seruice which be the nature of Socage tenure.

What ſocage in tenure is.

SOcage is properly where the tenaunt is bounde to come with his poke, that is, with his plow to eare and ſowe parcel of the demeane landes of his lord, which ſeruice in auncient time was very common but now by the mutual conſent both of the lord & of the tenant, it is conuerted for the moſt part into a perely rent. Howbeit ỹ name of ſocage abideth ſtil, wherfore now al ỹ is not knightes ſeruice, is called by the name of ſocage.

¶ So that if a man holde by fealtye onely, or by fealty & homage for al maner of ſeruices, it is but ſocage tenure, for homage alone maketh not knightes ſeruice, yet if a man holde by eſcuage certaine as I haue ſaid heretofore, he holdeth in effect but by ſocage.

Gardein in ſocage.

¶ Nowe where a man holdeth his landes by ſocage and dieth, his heire beinge within the age of xiiij. yeres, the lorde ſhall not haue the warde but the next of kinne to the heire, to whō the heritage cannot diſcende, ſhall haue the tytle and wardſhippe as well of the lande as of the heire, till the heire come to the age of xiiij. yeres, and ſuch tutor or gardeyne is called gardeyne in ſocage, and ſhall render accomptes to the heire of the illues and profites that hee hath receyued of the landes duringe ſuch tyme, deductinge his reaſonable coſtes and expenſes, ſo that he ſhal not haue the wardſhip to his owne vſe and profitte, as the Lorde which is gardeine in chiualrie hath. And in caſe the gardeine in ſocage dyeth before hee haue made hys accompt, the heire is wythout remedie becauſe

no

no wrīt of accompt lyeth against the executors but for the kinge only.

¶ Finally ye shal vnderstand that when tenāt in socage dyeth, the lord of whom the lāde in holden shal haue a relefe, that is to say ỹ value of the rent ỹ is yerely due vnto him of the tenancy beside the yerely rent, so that in effect after the death of his tenant he shal haue of the heire if. rents, saue that for the relefe he may distraine forthwith, but for the accustomed rēt he cānot distraine til the vsual day of paymēt be come. Rent. Distresse.

Franke almoigne.

THe tenaunt in franke almoigne that is to say, in frē almes is where a Bysshop, Deane or any other ecclesiastical person holdeth of his lord, in pure & perpetual almes, & such tenure began first in olde time, after this manner, when a man was seased in auncient tyme of certaine landes or tenements in his demeane as of fee, & of the same tenements enfeoffed an Abbot, and his conuent, or a Prior & his conuent, or any other person ecclesiastical, as a Deane of a colledge, maistre of an hospitall, or such like, to haue and to hold the same landes to them and to their successours for euer in pure & perpetual almes, or in franke almes, in these two cases the tenāts should bee holden in franke almoigne. The first foundation of frāk almoigne

¶ By force of which tenure they that holde in franke almoigne after this sort bee bounde of

right before god to make orisons and prayer, to celebrate masses & to doe other deuine seruices for the soules of their graunceirs and feoffours & for the soules of their heires which be dead & for the prosperous estate of their heires & be nowe alyue. And because of right they be bound to this deuine seruice, they be discharged by the law to do any other prophane or corporal seruice as fealty or such other like.

Tenaunt in frãk almoigne shal doe no fealty.

¶ But neuertheiesse if such as hold their tenements in franke almoygne do omit & leaue vndone these deuine seruices whereunto they bee bound before god, the lord cannot distreine them ne yet compel them by any other meanes by the course of the common law, but the onely remedy is to complayne of thẽ to their ordinary who of right ought to compel such ecclesiastical persones to doe the deuine seruice due as afore saied.

¶ But here ye shall note that if a parson of a church or any other ecclesiasticall person holdeth of his lord by certaine deuine seruice to be done as to sing masse euery fryday in the weke, or placebo and dirige, or to finde a preest to singe masse, or to distribute in almes C. pẽce to a hundreth men at such a day, in al these cases if such deuine seruice be vndone, the lord may very wel distraine, because the seruice is put here in certaine.

Tenaunt by deuine seruice.

Distresse for deuine seruice.

Nowe I saied that if in old tyme a manne did enfeffe such ecclesiastical persone after such sort, he shoulde holde hys landes in franke almoigne. But at this day it is otherwyse, for by the reason of a statute called Quia emptores terrarum, Westmin. 3. ca. 1. Noma̅ can alien

ne

ne graunt lands or tenementes in fee simple to holde of him selfe, so that nowe if a man beinge sealed of lands in fee simple graunteth the same by ycence to an ecclesiasticall person in franse almoigne, these wordes franke almoigne be void & the ecclesiastical person shal hold them immediatly of the lord of the feoffour by the same services that the feoffour held, so that no man can holde in franke almoigne but by force of a graūt made before the said statut, onely the kings matesty excepted, for he is out of the cōpasse of the statute.

Finally ye shal note that whereas a man holdeth in frank almoigne, his lord is bound by the law to acquit him of al manner of seruice ỹ any other lord can haue or demaund out of the said landes.

That if he doe not acquite him but suffer him to be distrained, then he shall haue against his lord a certaine writ, called a writ of mean & shall recouer against him his dāmages & costes of his suit. Writ of mean

Of Burgage.

A Tenure in burgage, is where an aūcyēt borough is, of which the kīg is lorde, & they which haue tenemēts wtin ỹ sāe borough hold ỹ sāe of ỹ kīg paīg a certeine yerely rēt, which tenure in effect is but socage tenure, likewise it is, where as any other lord spiritual or tēporal is lord of such borough Socage tenū.

Here yee shal note that for the most part such auncyent boroughes and townes haue dyuers customes & vsages which other townes Custome.

haue not. For some boroughes haue a custome ỹ the yõgest sonne shal inherit before the eldest, which custome is called commonly borough English.

Dower by custome.

¶ Also in some borough by the custome, the woman shal haue for her dowry al ỹ lãds & tenements whereof her husband was seased at any time during ỹ matrimony & couerture.

Deuise by custome of boroughs.

¶ Moreouer in some boroughes a man may bequeath or deuise his lands or tenements by testament at ỹ time of his death, & by force of such deuise or legacy, he to whõ the bequest is made after ỹ death of the testatour which made such testament may by force of this auncient custõe enter into the lands so to him bequeathed or deuised without any liuery of seasen to him made or further ceremony of law.

¶ Howe be it how & in what manner a man may at this day deuise his lãds by his last will & testament by force of a certaine newe statute it shalbe hereafter declared.

¶ Diuers other customes in England there be contrary to the course of the cõmon lawe, which if they be any thing prouable & may stãd with reason, are good & effectual, notwithstãding they be against the common law.

¶ And note that no custome is allowable but such custome as hath bene vsed by title of prescription or time out of minde.

Of villenage or bonde seruice.

A Tenaunt in villenage is properly when a villayne, that is to say a bondeman holdeth of his Lorde, whose bondman he

he is, certaine landes or tenementes, accordinge to the custome of the maner, or otherwise at the will of his Lorde, and doe to his Lorde villaine seruice, as for to beare and to cary the dong of his lordes out of the Citie, or out of his lordes maner, and it to lay vppon the demeine landes of his lorde, or to do such like seruice and villaynes seruice. How be it, freemen in some places holde their tenementes, and landes of their lordes by custome, by such sort of seruice, and their tenure is called tenure in villenage, and yet they them selues bee no villaines ne of seruile condition, but free men. For the land holder in villenage maketh not the tenaunt a villaine, but contrary wise a villaine may make free lande to bee villaine lande vnto his Lord. As if a villaine purchase lande in fee simple or fee tayle, the Lorde of the villaine may enter into the land so purchased by his bondman, and put him and his heires out for euer, and this done, the Lorde if he will may lease the same lande to his villaine, to holde of him in villenage.

¶ And here ye shall vnderstande, that seruitude or villenage, is the ordinaunce not of the lawe of nature, but of that lawe, which is called Jus gentium: by which a man is made subiect contrary to nature, vnto another mans dominion. For hee that is villaine or bondman eyther he is so by title of prescription, that is to say, hee and his auncestours haue beene villaynes time out of minde, or els hee is a villaine by his owne confession in the court of recorde, so that all villaines eyther they be borne villaines, or elle they bee made so. They bee

borne villaines when their father being a bond man him selfe begetteth them in lawfull wedlocke, either of a free woman or of a bond woman, for so that the father bee bond, the issue of him lawfully begotten must needes be bond by the lawes of Englande, having no regarde to the condition of the mother, where as in the ciuil lawe of the Romaines it is clene contrarie. For there, partus sequitur ventrem, that is to say, the seruitude or bondage of the mother maketh the child bond, & not the bondage of the father. Now be it the bastard sonne of a bond mā shal not be bond, & the reason is because a bastard is Nullius filius in the lawe, that is to say no mans sonne.

Bastard.

¶ They be made bond men or villaynes two waies, either by their owne proper act, as whē a free personne being of full age will come into a court of record, & there cōfesse himselfe bōd to another man.

¶ Or els by ye lawes of armes called, Ius gentium: as when a man is taken prisoner in warres, & is compelled to serue and become ye thrall & bondman of him that toke him, the lawe calleth such person a villaine, that is to say a slaue and thrall.

Diffinition of villany.

¶ And ye shal note ye villains be properly called in Latin, serui, because ye when they be taken in warre, the captaines be wont not to kil thē but to sel them, & so to saue their liues, so ye they be called serui a seruando, that is to say of sauing. They be also called Mancipia, a manu capiēdo, because ye they be taken by hand & power of their enemie.

Now as I sayde by the lawe of nature, we

we are al borne free, but after that by the lawe of Gentilitie, ſeruitude or bondage did preſſe & inuade the worlde, that enſued the benefit of manumiſſion. Manumiſſion is quaſi de manu datio, that is to ſay a geuing out of the hand or power. For ſo long as a man is in bondage & ſeruitude, he is ſubiect to the hand and power of another, and when he is manumiſſed hee is made free, and deliuered from the ſaide power, ſo that a manumiſſion is to ſay, a writing teſtifying that the lord hath enfranchiſed his byllaine & al his offſpring & ſequel. Manumiſſio.

¶ Alſo yf the Lorde make to his bondman an obligation of a certaine ſomme of money, or graunteth to him by his deede an annuitie or yerely pention, or leaſeth to him by deede lands or tenementes for terme of yeres, any of theſe actes do implie an enfranchiſement.

¶ Likewiſe if the Lorde make a feoffement to his villaine, and make vnto him liuery and ſeyſin, this alſo is an enfraunchiſement and ſecret manumiſſion. Briefely to ſpeake, whereſoeuer the lorde compelleth his villaine by the courſe of the lawe to doe that thing that hee might otherwiſe enforce hym to doe, or to ſuffer without the auctheritie and compulſion of the lawe, he doth by implication infraunchiſe his villaine, as if the Lorde will bringe againſt his villaine an action of dette, an action of accompt, of couenaunt, or of treſpaſſe, theſe & ſuch like be in the eye of the lawe enfraunchiſements & manumiſſions, becauſe that the lorde in all theſe caſes may haue the effect and purpoſe What actes make manumiſſion in the lawe.

Cauſe of infranchiſement.

poſe of his ſuite, that is to ſay, the goodes, cattels & correction of his bondman, without the compulſion of the lawe, euen by his owne proper power and authoritie which he hath vpon his villaine. But if the Lorde do ſue his villaine by an appeale of felonie, the villayne being lawfully endicted of the ſame before, this is no tacite manumiſſion or vnfraunchiſement, for the lord though he haue power to beate hys villaine and to ſpoile him of his goodes, yet hee cannot by the lawe of this realme put hym to death.

Ye ſhall alſo vnderſtand, that if anie mans bondman purchaſe landes or acquire and get vnto him any other thing, the lorde may forthwith enter and ſeyſe the ſame in his owne handes. Wherefore if the Lorde will bring againſt his villaine a Pꝛecipe quod reddat, by which he demaundeth againſt his villaine ani landes or tenementes, this implieth an vnfranchiſement, foraſmuch as hee bindeth him ſelfe to the preſcript and aucthoꝛitie of ꝯ lawe, where as he might vſe his owne aucthoꝛity by entering and ſeyſing the ſaid landes.

Finally ye ſhall marke that ſome villaynes bee called villaynes in groſſe, and other ſome bee called villaynes regardant. In groſſe bee they of which the Lorde is ſeuerall ſeyſed, and not by reaſon of anie lordſhippe, or maner, but they bee called regardant which doe belong to a maner of which the Lorde is ſeyſed, and the ſayed villaines haue beene regardant, that is to ſay expectaunt and attendaunt tyme out of minde to the lorde of the ſayed Maner in doynge vnto him ſuch ſeruices as to a villaine

laine appertaineth.

¶ Of auncient demeſne.

THere is alſo a certaine kinde of tenure which is called auciēt demeſne, & thoſe tenaunts which holde by this ſeruice, be freholders & by charter, & not by copy of court rolle, or by ỹ verge after ỹ cuſtome of the maner, at the will of the lord. And theſe tenaunts be ſuch as holde of thoſe maners which were ſaint Edwards the king or which were in the handes of king William the conquerour, and theſe maners be called the auciēt demeſnes of the king, or the auncient demeſnes of the crowne of England. And to ſuch tenāts which hold of ſuch maners be many and diuers liberties geuen and graunted by the lawe, as to be quite of tolle and paſſage, and ſuch like impoſitions which be demaunded of men for their goods & cattels ſold or bought in faires & markets by thē, alſo to be quite & free of tare & tallage graunted by parliament, except ỹ ỹ kinges maieſty do take auciēt demeſne as to him onely appertaineth whē he thinketh good for great & vrgent conſiderations. Tenaūts alſo of auncient demeſne ought to be quite of payments to the expenſes and charges of the knights which come to ỹ parliament, alſo they ought not to bee impanelled nor put in iuries, & enqueſtes in the cōtrey out of their maners or ſeigniorie of auciēt demeſne, for the lands which they holde of ſuch maners, vnleſſe they haue other landes at the common lawe for which they ought to be charged. And if ſuch tenaunts or anie of them

which

which holde of the maner of auncient demeins be distrained to do vnto their lord other seruices or customes then they or their auncestors haue vsed to do, then may they sue a certaine writte called Monstrauerunt directed to the lord commaūding him ꝑ he distraine thē not for to do other seruices or customes thē they haue ben accustomed to do.

Writ of Mōstrauerunt.

And for further knowlege hereof ye shal vnderstand that in the Eschequer there is a booke called domesday, which booke was made in the time of the sayd saint Edward. And al ꝑ lands which were in the seysin, & in ꝑ hands of ꝑ sayd saint Edward at the time of the making of the said booke be auncient demeine. But the landes which then were in other mens hands though they be written in ꝑ said booke be frāke fee and no auncient demeine.

Franke fee.

¶ Finally it is to be noted, that tenants of auciēt demeins shal not be ipleaded for their sayd lands out of the maner whereof they so hold, & if they be, they may shew the matter and abate ꝑ writ. But if thei once answere to the writ & iudgement geuen, then ꝑ lands haue lost ꝑ nature & benefit of auncient demeine, & are become franke fee, ꝑ is to say, pleadable at the common lawe for euermore. And thus haue we spoken of the diuersitie of tenures.

Abatement of the writte.

Of rentes.

FOrasmuch as vpon euery tenure there is commōly reserued one rēt or other, therefore I thinke it good somewhat to treat of rents. But ye muste vnderstand that there be

be sundry sorts of rents. There is one kinde of rent which is called rēt seruice, a nother which is called charge, & the thirde which is named in frenche rent secke, ẏ is to say in Latin redditus siccus a dry rent. Nowe rent seruice is so called because it is knit to the tenure, & is as it were a seruice whereby a man holdeth his landes or tenementes, or at the least way when the rents vnseuerably coupled & knit with the seruice, as for an example, where the tenaunt holdeth his lād of ẏ king or of any other lord by fealty & by certaine rent, or by homage, fealtye and certaine rent, or by any sortes of seruices & by certayne rent, this rēt is called rent seruice. And here ye shal note that if this rent seruice be at any time when it ought to bee paied, behynde and vnpayd, the Lorde of whom the lande or tenement is so holden, whether it bee in fee simple, fee tayle, for terme of life, for yeres, or at will, may of common right enter and distrayne for the rēt though there be no mention at all, ne clause of distresse put in the dede or lease: I sayd beefore that the nature of this rent seruice is to be coupled and knitte to the tenure. For where no tenure is there can be no rent seruice. And therefore if at this day I bee seysed of landes of fee simple, and make a deede of feoffement of the same to an other in fee simple reseruinge by the same dede a rent, this can be called no rent seruice, because there can bee nowe no tenure beetwene the feoffour and the feoffee: Otherwise it is of feoffementes in fee simple made before ẏ statut of westminster the third. Cap. 1. called Quia emptores terrarum. For before the makinge

Diuision of rent seruice.

Distres of cōmon right.

kinge of that ſtatut, if a man had made a feoffe-
ment in fee ſimple, reſeruinge to him a certayne
rent, yet though it had ben without deede, here
had bene begunne and created a newe tenure be-
twene the teoffour and the feffee, and the feoffee
ſhoulde haue holden of the feffour, who by ver-
tue of the ſame might of cõmon right haue diſ-
trayned for ſuch rent. But at this day by force
of the ſaied act, there can be no ſuch holdinge or
tenure created or begon, and conſequently no rẽt
ſeruice canne be at this day reſerued vppon any
gift in fee ſimple, except it bee in the kinges caſe,
whoe beinge cheefe lord of al, euer might & may
geue landes to be holdẽ of him. Thus ye ſe, that
this day no ſubiect can receiue any rent ſeruice
vnto him vnleſſe the reuerſion of the landes or
tenements that he ſhal graunt be ſtil in him, as
where he graunteth them in fee taile, or maketh
but a leaſe for terme of life, or for certaine yeres,
or els at will. For in theſe caſes the reuerſion of
the fee ſimple remaineth ſtil in him, and therfore
if here be any rent reſerued it is to be called a rẽt
ſeruice, & is of commõ right diſtreinable though
there bee no clauſe of diſtreſſe in ỹ deede of feffe-
ment or leaſe.

¶ But here ye will aſke mee, when in the caſe
before remembred a manne at this day geueth
cleane awaye the lande or tenement from hym
ſelfe in fee ſimple, ſo that there is no maner of
reuerſion of the ſame remayninge in him at all,
& yet neuertheleſſe reſerueth vnto him by hys
deede a certaine rent, what maner rent ſhall this
be called: I anſwere, if there be in the deede in-
dented any clauſe of diſtreſſe, that is, that if the

rent

rent be behinde vnpeide, it shalbe lawfull for the teoffour to enter & to distraine, it is called a ret charge, forasmuch as the lande is charged therwith, but howe of common right, no, but onely by vertue and force of the writinge, but on the other side, if there bee no such clause of distresse put in the indenture, then the rent so reserued shalbe called a rent secke. Charge

¶ Likewise if a man that is seised of certaine lands will graunt either by indenture or by his deede polle, that is to say, single & not indented, a percly rent out of the same landes to another, whether it be in fee simple, fee taile, for terme of life, for yeres, or at will, with clause of distresse, then this rent is called a rent charge, and hee to whom such rent is graunted, may for detaut of payment thereof enter and distraine. But contrary, if the graunt bee made without any such clause of distresse, it is called rent secke, that is to say, a drye rent, because hee cannot come to it, in case it be denied by way of distresse, in so much that if hee were neuer seised of it, hee is by the course of the commõ law without remedy. Otherwise it is of a rent charge, for here hee to whom the graunt is made when the rent is behinde, may choose whether hee will sue a writ of annuitie against the grauntour, or distreine for the rent behynde, and retayne the distresse till time he be payde accordingly. But hee can not haue both remedyes together, but must take him to the one, for if hee once recouer by a writte of annuytie, then is the lande discharged. And if hee sue not his writte of annuitye, but dystrayne for the arrerages, and the tenaunt sueth a replevin, whereuppon the other auoweth Annuitie Replevin

auoweth the takinge of the distresse in court of recorde: then is the land charged and the person of the grauntour dyschargeo of the action of annuitie.

Estoppel

¶ Ye shal also vnderstand that if a man wil ẏ another shall haue a rent charge cōminge out of his land, & yet wil not ẏ his person shalbe by any meanes charged by writ of annuitie, he may thē haue such a clause in ẏ end of his dede. Prouiso q̄ presens scriptum, nec quicquam in eo cōtentū vllo pacto se extendat ad onerandum personam meam per brē seu actionem de annuitate sed tātūmodo valeat ad onerandū terras, fundos, et tenēta mea de annuo redditu predicto. If this or such like clause be added, then the lande is charged & the person of the grauntour is discharged.

Prouiso

¶ Also if a man wil make a dede of graunt in this wise, that if John at Stile bee not yerely payd at the feast of Christmas for terme of his life xx. shillings sterling, that thē it shalbe lawful for ẏ said John at Stile to distraine for it in ẏ Mannour of Dale, this is a good rent charge because the Manour is charged with the rent by the way of distresse, & yet neuertheles in this case the person of him ẏ made such dede is dyscharged of any action of annuitie forasmuch as he graūted not by his dede any annuitye to the said John at Stile but only grāted ẏ he might distraine for such yerely rent.

Furthermore ye shal note, that if a man haue a rent charge to him and to his heires comming out of cercayne landes, and dothe purchase any parcell of this landes to him and to hys heires, in this case the whole rent charge is

quenched

quenched and gone, & the annuitie also, the cause is this, that a rent charge cannot be in such case apportioned. Otherwise it is of a rent service, as for example, If one which hath a rent service of xx s. by yere, doe purchase parcel of the lande out of which this yerely rent of xx. s. is commynge, this shall not extinguish or drowne the whole rent, but for that parcell onely. For rent service in such case maye very well be apportioned and rated accordinge to the value of the lande. Yet there bee sortes of rentes services which in no wise can be apportioned. As where a tenaunt holdeth his lande of his lorde by the service to render to his Lorde yerely at such a feast, an horse ladynge of golde, a redde rose, a gylynger, or such lyke, yf in this case ỹ lord doe purchase parcel of the land thus of him holden, this service is gone, because such service, cannot be severed and apportioned. Al estuage is a service that may very wel be apportioned accordinge to the afferance and rate of the lande.

Extinguishement.

Rent service cannot be apportioned.

¶ But where any lande is holde by homage & fealtie, if the lord purchase parcel of lande, yet he shal haue his homage and fealtie still of his tenant.

¶ Ye shall marke also, that if a man make a a lease of landes to another for terme of lyfe, reserving to him certaine rent, if in this case hee graunt that rent to John at Style, saueinge to him selfe the reuersion of the said lande, this rent is but rent secke, because John at Style that hath the rent, hath nothing in reuersion of the land.

But if he graunt the reuersion of the lande

to Iohn at Noke for terme of life, & the tenant atturne accordingly, then hath Iohn at Noke the rent as rent seruice because he hath the reuersion for terme of his life.

Atturnement

¶ Likewise it is if a man geue lands or tenements in taile, reseruinge to him & to his heirs certein rēt, or make a lease of the land for terme of lyfe, reseruing certaine rent, if he graunt the reuersion to another and the tenant atturne accordingly, the whole rent & seruice shall passe by this worde reuersion, because the rent & seruice in such case be incident to ỹ reuersion & do passe by the graunt of the reuersion. But if hee had graunted the rent onely.

Rent is incident to a reuersion.

¶ What remedy a man hath to recouer his rent when it is behinde.

I Shewed you before, that for a rent seruice if it be behinde, ye may distrain in the grosid euen of cōmon right though there be no such clause of distresse mencioned in the dede of feoffement, graunt, or lease.

Also for a rent charge, ye shall distraine or bringe your writte of annuitie, at our choyse and election as before is declared. But of a rēt secke, if ye were neuer seased of it nor of any parcel therof, ye bee without remedy by course of the common lawe, for ye cannot distraine for it, nor yet bringe your writt of annuitie, but if ye were once seysed of it, or of parcel thereof, & it is ett sones behind, thē your remedy shalbe this,

ye

ye muſt go either by your ſelfe or by your deputie to the lande or tenement out of which the rent is comming and there demaunde the arrerages of the rent, which if the tenaunt denie to pay, this denial is a diſſeiſin of the rent. Alſo if the tenaunt be not then readie to pay it, this counteruaileth a denyall, which is a diſſeyſin. Moreouer if neither the tenaunt nor none other man bee remayning vppon the ground to pay the rent, when ye demaunde the arrerages, this alſo is a denyal in the lawe, and is in deede a diſſeiſin. And of thoſe diſſeyſins ye may haue an aſſiſe of nouel diſſeiſin againſt the tenaunt and ſhall recouer ſeiſin of the rent and the arrerages and your dammages and coſtes of your writ and of your plee. And if after ſuch recouerie and execution had, the rent be agayne at another time denyed you, then ye may haue rediſſeiſin and ſhall recouer your double dammages &c.

Diſſeiſin of rent ſecke.

Aſſiſe.

In rediſſeiſin double dammages.

It ſhalbe therefore wiſedome for a man whē a rent is graunted by any perſon vnto him to take of the tenaunt of the lande a penny or an halfe peny in name of ſeiſin of the rent, & then if at the next day of payment the rent bee denyed him, he may haue an aſſiſe of nouel diſſeiſin.

¶ And ye ſhal note, that there bee three cauſes of diſſeyſin of rent ſeruice, that is to weete reſcouſe, repleum, and incloſer. Reſcous as when the lord vppon the lande holden of hym diſtrayneth for his rent behinde, and the diſtreſſe bee reſcued from him, or if the lorde come vpon the land and will diſtrayne, and the tenaunt or any other man for him will not ſuffer him, thys is called Reſcous.

Three cauſes of diſſeiſin of rent ſeruice.

Reſcous.

¶ Repleuin is, when the lord hath distrained & repleuin is made of the distresse by writte or by plaint. Encloser is where lands or tenemtes be so enclosed ẏ the lord can not come win the lands or tenemts for to distraine. And the chiefe cause why such things so made by disseysin to the lord, is forasmuch as ẏ lord is by this way disturbed of the meane and remedy whereby he ought to come & haue his rent, that is to wete by distresse.

Enclosure.

Foure causes of disseisin of rent charge.

And there be fower causes of disseisin of a rēt charge, ẏ is to wete, rescous, repleuin, encloser & denier. For denier or denial is as wel a disseisin of a rent charge as it is of rent secke.

And two of rent secke.

¶ Finally ye shal vnderstād, that there be two causes of disseisin of a rent secke, that is denial and incloser.

One other cause of disseisin.

¶ And it seemeth ẏ there is yet another cause of disseisin of all the three rentes aforesayd, ẏ is to wete this when the lord commeth to the lād holden of him, or when he ẏ hath a rent charge or a rent secke commeth to the land to distraine for the rent behind, and the tenant hearing this encountreth him, & forestalleth him the way wt force and armes and manasseth him in such sort as he dare not come to ẏ ground for to distraine for his rent behinde for feare of death, or mutilation of his mēbers, this is a disseisin because the party is disturbed of his meane, and lawful remedy whereby he ought to come to his rent.

Act of parliament.

¶ Finally ye shall obserue and marke, that by an act of parliament made in the xxxij. yeare of our soueraigne lord king Henry the eyght, yt is lawfull for the executours and administra-

tours

tours of tenaunts in fee simple, tenaunts in fee taile, tenaunts for terme of life, of rent services, rent charge, rent seckes, and of fee fermes, for arrerages of such rents as were due vnto their testatours in their liues, eyther to distraine for the same, or at their election to bring an action of dette, except in such lordship in Wales or in the marches thereof, where as the tenauntes haue vsed time out of minde to pay vnto euerie lorde at his first entrie into the lordship anie somme of money for the redemption of all maner of duties and penalties incurred at anie time before their lordes entrie. Distres or actions of det.

¶ Also by force of the saied act the husbande which was seised in the right of his wife may after the death of his wyfe eyther distraine or bring an action of det for the arrerages of such rents as were due and vnpaide in her life.

¶ Likewise it is of him that hath a rent for terme of another mans life, if he for terme of whose life he hath the rent dieth, yet by vertue of the said act he or his executors and administrators may eyther distraine or bring an action of det for the arrerages due before the death of him, for terme of whose life he had the rent.

¶ How auowries ought to be made of rentes and seruice, enacted.
An. 21. H. 8. ca. 19.

VVhere any landes be holden of anie persone by rentes, customes, or services, if the Lord distraine vppon the same landes for anie such Rentes, Customes, or Seruices and replevin thereof to bee sued, the Lord

may auow or his bailife or ſeruaunt may make conyſaunce or iuſtifie the taking vpon the ſame landes, as within his fee and ſeigniory alleaging in the ſaid auowrie, conuſaunce, or iuſtification, the ſame landes to be holden of hym without naming anie perſon certayne to bee tenaunt of the ſame, and without making anie auowrie, iuſtification, or conuſance vpō any ꝑſon certein.

Second deliuerance.

And likewiſe vpon euery writte ſued of the ſecond deliuerance. And they that make any ſuch auowrie, iuſtification, or conuſaunce, if the ſame auowrie, conuſaunce, or iuſtification bee founde for them, or the plaintife bee nonſuite or otherwiſe barred, then they ſhall recouer their whole dammages and coſtes.

Dāmages.

Also the ſaid plaintifes and defendauntes ſhall haue like plees and one ayde prayers (plees of diſclaimer only except) as they might haue had before the making of this act.

Plees in auowrie.

¶ Alſo ſuch perſons as by the cōmon law may ioyne to the plaintife or defendaunt in the ſaide writtes of Replegiare or ſecond deliuerance as well without proceſſe as by proceſſe, ſhal from henceforth alſo in this caſe ioine vnto thē aſwel without proces as by proces, & haue lyke plees and like auauntages in all thinges (diſclaimer onely except) as they might haue by the cōmon lawe before this act.

¶ An act for the aſſuraunces of fermours. made An. 32. H. 8. ca. 28.

ALL Leaſes hereafter to bee made of any landes or other hereditamentes by wrytinge indented vnder Seale for terme of yeares or for terme of lyfe by anie perſonnes beynge of

of ful age of xxj. yeres hauing any state of inheritance either in fee simple or in fee taile in their owne right, or in the right of their churches or wiues, or iointly wt their wiues, shalbe good & effectual against the lessours their wiues heirs & successors according to the estate compriſed in such indenture of lease.

¶ Prouided that this act shall neither extende to any leases to bee made of any landes hereditamentes beinge in the handes of any fermours by vertue of any olde lease vnlesse the same olde lease be expired surrendred or ended within one yere after the makinge of the newe lease, nor yet to any graunt to bee made of the reuersiō of any landes or hereditamentes nor to any lease of such lands or hereditaments as haue not cōmonly bene letten to farme by the space of xx. yeres next beefore such lease thereof made, nor to any lease to be made without impeachement of wast, nor to any lease to bee made aboue the number of xxi. yeres or three liues at the most from the date of makinge thereof. And that vpon such leas be reserued yerely during ỹ same due and payable to the lessours their heirs and successours to whom the landes shoulde haue come after the death of ỹ lessours, and to whom the reuersion thereof shal pertaine accordinge to their estates & interestes, so much yerelye rent or more, as hath beene accustomably yelded for the same, within twenty yeres next before such leases, and that hee to whom the reuersion thereof shall pertayne after the death of such lessours or their heires shall haue such lyke remedye and aduauntage agaynst the fermors thereof their executoures and assignes, as the

Surrender of the olde lease.

lessour himselfe should haue had.

The wife shalbe party to the lease.

¶ Prouided also that the wife be made partie to euery such lease as shalbee made by her husbande of any landes beinge the inheritaunce of the wife, and that euery such lease bee made by indenture in the name of the husbande and hys wife, and she to seale thereunto. And that the rent be reserued to the husband & wife, and to ȳ heires of the wife, according to her state of inheritaunce therein. And that the husbande shall in no wise alien, discharge, graūt or geue away the same rent reserued nor any part thereof longer then during the couerture, without it be by fine leuied by the said husband and wife.

¶ Prouided furthermore that this act extende not to geue libertye or power to any personnes to take any mo fermes, leases, or takinge of any landes, or other hereditaments, then they might haue done before the makinge of this act, nor yet extend to geue any libertie to any person or vicar of any church or vicarage, for to make any lease or graunt of any of their messuages, landes tenementes, tithes, profites, or hereditamentes belonginge to their churches or vicarages otherwise then they myght haue done before the makinge hereof. Anno xxxij. Henrici viij. capitulo 28.

What graunt by a corporation is good.

¶ It is furthermore enacted that the graunt lease or gift or election of the gouernour or ruler of any hospitall, college, deanry or other corporation wyth the assent of the more parte of such of the same as haue voyce thereunto, shall bee good and effectuall, any rule or statute made by any founder to the contrarye, notwithstandinge.

Of

¶ Of falsifyng of recoueries by fermours enacted Anno 21. H. 8. ca. 15.

ALL fermours or lessees for terme of yeres may falsifie for their terme onely recoueries had by famed titles as wel as a tenant in freehold. And the same fermours their executoures and assignes shall enioy their saied termes according to their leases against such recoueries cuē as if none such had bene suffered. In which case neuertheless the recouerer, after such recouery had shal haue like remedy against the fermours, by auowrie, or action of dette for rentes and seruices reserued vppon the same leases beynge due afore the same recoueries, and lyke actions for wast done after the same recouueries, as the lessours might haue had if no such recouerie had beene had. Furthermore no statute staple, statut marchaunt, nor execution by Elegit shalbee auoyded by any such feyned recouery, but like remedy shalbe had to auoid & falsifie the said recoueries, as is ordeined for the fermor or lessee for terme of yeres. Auowrie or action of dett

¶ Of tithes and howe they shalbe recouered enacted Anno 32. Henrici viij. cap. 7.

ALL persons shal truely pay their tithes & offeringes according to the lawful customes and vsages of pishes & places where such tithes or dueties be due. And if they do wilfully withholde any parcel of them: the partie whether he be ecclesiastical

cleſiaſtical or lay that ſhould haue them may cō=
uent ſuch perſons before the ordinary his com=
miſſary or other competent miniſter or iudge of
the place where ſuch wronge ſhalbe done acco=
dinge to the eccleſiaſticall lawes. And in euery
ſuch cauſe of ſuit the ſame ordinarye or iudge
hauinge the parties or their procuratour before
him, ſhall procede to the determination therof
ordinarily or ſummarily according to the courſe
of the ſayd lawes, & thereupon ſhal geue ſentence
accordinge.

¶ And in caſe any of the parties of any mat=
ter concerninge that ſuit, do appeale frō the ſen=
tence and diffinitiue iugement of the ſayed iudge
then the ſame iudge forthwith vppon appel=
latiō made, ſhal aiudge to ỹ other party the rea=
ſonable coſtes of his ſuit, and ſhall compell the
ſame party appellant to pay the ſame by com=
pulſary proceſſe cenſure of the ſaid lawes taking
ſuerty of the other party to whom ſuch coſtes
ſhalbe adiudged, to reſtore the ſame to the appel=
lant, if afterward the principal cauſe of that ſuit
of appeale ſhalbe adiudged againſt him. And ſo
euery iudge eccleſiaſticall ſhal iudge coſtes to the
other party vpon euery appeale to be made in a=
ny ſuit or cauſe of ſubtraction or detention of a=
ny tithes or offeringes, or in any other ſuit to be
made concerninge the dueties of ſuch tithes or
offerings. And if any perſons after ſuch ſentēce
geeuen againſt them ſhall obſtinatlie refuſe to
pay their tithes or dueties, or ſuch ſummes of
mony ſo adiuged wherein they be condempned,
then two Iuſtices of the peace of the ſame ſhire,
whereof one to be of the Quorum, ſhall vppon

certifi=

certificat or complaint to the made in writinge by the iudge that gaue the sentence, cause them to be attached & committed to the next Jayle, there to remaine without baile or mainprise, till they shall haue founde sufficient suerties to bee bounde by recognisaunce or otherwise before the same Justice to the kinges vse for the performance of the said iugement.

¶ Prouided that no personne shalbe sued or otherwise compelled to pay any tythes for any landes, tenements, or hereditamts which by the lawes of this realme are discharged or not chargeable with the payement of any such tithes.

¶ Also this act shall in no wise binde the inhabitaunts of London, & suburbes of the same to pay their tithes & offeringes within the same citie & suburbes otherwise then they should haue done before.

¶ Furthermore if any hauing an inheritaunce, freholde, terme, or interest in any personage, vicarage, portion, pention, tithes, oblations, or other ecclesiasticall profite made or to be made temporall, or admitted to be in temporall handes by the lawes or statutes of this realme, bee disseised or otherwise put from the same or any other person claiming to haue interest therein, the person so disseised or wrongfullye put from his saied right or possession his heire, wife, and other to whom such wronge shalbe done, may haue remedie in the kinges temporall courtes, as the case shal require for the recouerie therof by writ originall of Præcipe reddat, all of nouel disseyson, Mordaunc, Quod ei deforceat, writtes of dower, or other writtes originall to bee graunted in the Chauncerye of euerie such personage

vicarage

vicarage portion, pension, or other profit eccleſiaſtical according to the nature of the ſuit therof. And writs of couenant & other writs for fines to be leuied & al other aſſurances to bee made of any ſuch parſonages or profits eccleſiaſtical, ſhal be deuiſed & graunted there like as hath bene vſed for fines to be leuyed & aſſuraunce to be had of lands or other hereditamnts & al iugements geuen vpon ſuch writs original graunted for any the premiſſes and al fines leuied & knowleged in any of the kings ſaid courts therof, ſhalbe of like force as iugements geuen & fines leuied of lands tenements & hereditaments.

¶ Of mortuaries enacted Anno 21. H. 8. ca. 7.

NO perſon ſpiritual, their fermors or baillifes ſhall cal any perſon before any iudge ſpiritual for the recouerie of any Mortuaries more then is hereafter mencioned, vpon paine to forfait for euery time ſo much in value as they ſhal take aboue ye ſumme here limitted, & ouer that xl. s. to the party greued for which he ſhal haue an action of det by writ bill or information, wherin no wager of lawe eſſoine nor protection ſhalbee alowed. Firſt no mortuary ſhalbe taken of any which at his death hath in mouable goodes vnder the value of x. markes. Alſo no mortuarie ſhalbe taken but onely where mortuaries haue beene vſed to be payde, and there after the forme hereafter mencioned. Nor in no mo places but one, ye is to wete, there where his moſt abiding is, and there but one. Nor no perſon ſhall take

for

foz a moztuary of any person being at his death at the value of x. markes aboue his debts paied & vnder xxx.li. aboue iij.s.iij.d. And of ỹ value of xxx.li. & vnder xl.not aboue vj.s.viij.d. And of the value of ix.oz aboue of any ſume of what ſoeuer it be:not aboue x.s.

¶ Also no moztuary ſhalbe aſked noz paied foz any woman couert baron,oz child,oz any person not keping houſe,oz foz any waytaring mã,but the moztuaries of ſuch waytaring men be aunſwerable in ỹ place where they had their moſt dwelling at the time of their death.

¶ Neuertheles ſuch ſpiritual perſõ may take any thinge,which ſhal be diſpoſed oz bequethed to him oz to the high aulter of the church.

Also nothing ſhalbe taken foz moztuary in Wales noz the marches of the ſãe,noz in Calcis oz Berwicke oz the marches of the ſame,but onely in ſuch places of the ſame where moztuaries haue bẽ accuſtomed to be paied,& there but onely after the fourme aboue ſpecified. Prouided ỹ the Biſhop of Bangoz,Landaſe,ſaint Dauids & ſaint Aſſe and the archedeakẽ of Cheſter may take ſuch moztuaries of the prieſtes wtin theyr dioces & iuriſdictions as heretofoze haue bene accuſtomed. Prouided alſo that in ſuch places where moztuaries haue bene accuſtomed to bee taken of leſſe value,none ſhalbe cõpelled to pay any other moztuary oz moze foz any moztuary then hath bẽ accuſtomed,noz no moztuary there ſhalbe demaunded of any perſon exempt by this act vpon paine afoze limitted.

Of diſcontinuance.

It is

IT is called a diſcontinuance by the lawes of England, when hee that hath the poſſeſſiō of landes or tenementes for the time preſent, and yet not hauing the fee ſimple in him ſelfe nor in his owne right onely, maketh an alienation of the ſame to another, by reaſon wherof hee that ſhoulde haue them after hym and whych then hath right vnto them cannot enter but is driuen to his remedy by way of actiō in ſuch wiſe that the ſaied landes be not vtterly ſhifted and gone from ſuch perſō or perſons as haue right vnto thē, but be alonely diſcontinued for a time, till the perſon which after the death of ſuch diſcontinuer hath right vnto them doe recontinue and bringe them home agayne not by entre, but by ſuit and way of action. As for example, yf tenaunt in taile of certaine lāds doth enfeoffe another in the ſame in fee ſimple or fee taile, hath iſſue and dieth, his iſſue cannot enter into the landes though he hath tytle and right vnto them, but is put to his action, which is called a formedon in the diſcender. And if ſuch tenant in taile which maketh ſuch a feoffement hath no iſſue at ỳ time of his death, it is yet neuertheleſſe a diſcontinuance to him which is either in the reuerſion or in the remainder, ſo ỳ neither the one nor the other can enter, but bee driuen to their action, he in the reuerſion to his Formedon in the reuerter, and hee in the remainder to his Formedon in the remainder.

Formedon in the diſcendre.

Formedon in the reuerter or remainder.

¶ In like manner if a Biſhop doe alien landes which bee parcel of his biſhoprycke & dieth,

this

this is a discontinuance to his succeſſour for as much as he cannot enter, but is driuen to his writ of entre ſine aſſenſu capituli. Entre ſine aſſenſu capituli.

¶ Semblably, if a Deane be ſole ſeaſed of lãdes as in the right of his Deanry and maketh ſuch an alienation, this is a diſcontinuaunce to his ſucceſſour. Alſo if the maiſter of an hoſpital alieneth any landes of hoſpitall, this is a diſcontinuãce and his ſucceſſour cannot enter, but is put to his writ. De ingreſſu ſine aſſenſu cõfratrum & ſororum. Ingreſſu ſine aſſenſu cõfratrum & ſororũ.

¶ But if a ſon or a vicar of a church wil alien any of his glebe lands to another in fee ſimple or fee taile, and dyeth or reſigneth his benefice, this is no diſcontinuance to hys ſucceſſor but he may verye well enter notwithſtandinge ſuch alienation made by his predeceſſour. And the higheſt writ that a parſon can haue if hys predeceſſour haue alened his glebe lande or loſt it by default or reddition is a Juris vtrum. Juris vtrum

And furthermore note that no tenaunt of the lande can by his or their act diſcontinue ẏ right of him in the reuerſion vnleſſe it be by feoffemẽt with liuery and ſeaſon or els by a releas wyth warrantie.

And note that ſuch thinges as paſſe by way of graunt by dede without liuery & ſeaſon cannot be diſcontinued as auowſon commõ or villaine in groſſe, reuerſion, rent charge, common for beaſtes certaine and ſuch other like.

Alſo ye ſhal vnderſtand that in the xxxij. yere of this kinges moſt noble raigne, it is enacted that no fine feoffement or other act to bee made or ſuffred by the huſband onely, of any lands or tenements being the inheritaunce or free hold of

his

his wife during the coverture betwene them shalbe any discontinuance thereof or be prejudicial or hurtfull to the said wife or to her heyres, or to such as shal haue right title, or interest to the same by the death of such wife but that the same wife and her heires, and such other to whom such right shal appertaine after her decesse may then lawfully enter into al such landz and tenements accordinge to their rightes and titles therein.

¶ How so recoueries by collusion against tenātz for terme of life is no discontinuance enacted. An. 32. H. 8. ca. 31.

Where diuers persōs seased of lāds & hereditamēts, as tenants by the curtesie of Englāde, or otherwise onely for term̄ of life or liues haue heretofore suffered other persons by agreement or coun betwene them had, to recouer the same against them in the kings court by reasō wherof, they to whō the reuersiō or remaynd therof hath belōged, haue after ẏ deathez of such tenāts bene driuen to their actions for ẏ recontinuance & obtaining of the said lands and tenements so recouered, and some time haue bēe clerely disherited of the same, it is enacted that al such recoueries hereafter to be had by agreement of the party or by coun, or against any such particuler tenaunt of landes or heredytamentes, whereof he is or hereafter shalbe seased, as tenaunt by the curtesie of Englande, tenaunt in tayle after possibility of yssue extinct

or

or otherwise for terme of life shal from hereforth as against such persons to whom the reuersion or remainder shal the appertaine, & against their heires & successors be clerely void.

Prouided that this act extend not to any p̄son that shal by good title recouer any hereditamēts without fraud or couin against any p̄ticuler tenant by reason of any former right or title, nor yet to auoid any recouery to be had against any such particuler tenaunt by the assent & agreemēt of those in the reuersiō or remaundō, so that such assent & agreement doe appeare of recorde in the kings court.

¶ How wrongfull disseisin is no discent in the law, enacted. An. 32. H. 8. ca. 33.

WHere diuers persons haue by strength and without title entered into lands & tenements, and wrongfully disseised & dispossessed the rightfull owners & possessours thereof, & so being seased by disseisin haue therof died seased, by reason of which dying seased ŷ parties that were so disseised & dispossessed, or such other persons as before such discent might haue lawfully entred into the saied landes and tenements, be thereby clerely excluded of their entre in the lawe & put to their actyon for their remedy and recouery therin: It is enacted that ŷ dying seased hereafter of any such disseisour hauing no right or title therin, shal not be deemed any such discent in ŷ law to take away the entre of such p̄sons or their heires, which at the time of the same discent had good tytle of entre

into the same. Except ỹ such disseisor hath had the peasible possession of his landes or tenemts whereof he shal so dye seased by the space of v. yeres next after ỹ disseisin by him cõmitted wtout entre or continual claime by such as haue lawful title thereunto.

¶ The limitation of prescription enacted. An. 12. H. 8.

NO plȳ shal sue or maintaine any writ of right, or make any title or claime to any lands, tenements, rents, annuities cõmons, pẽsions, portions, corodies, or other hereditaments of the possession of his auncestour or predecessour, & declare any further seisin or possession of his ancestor or ỹ=decessor, but onely of the seisin or possession of his ancestor or predecessor, which hath bene seised of ỹ same within xl. yeres next before ỹ teste of the same writ, or next before the said title or claime to be sued.

Limitation of xl. yeres.

¶ Also none shal sue or maintaine any assise of Mordaunc estour, cosinage, ayle, writ of entre vpon disseisin dõe to any his auncestours or ỹ=decessours, or any other action possessary vpon the possessiõ of any of his auncestors or ỹdecessors, for lands or hereditaments of further seisin or possession of them, but onely his seysin or possession which was seised thereof within fifty yeres next before the teste of the originall of the same writ. And none shal maintaine action for landes or other hereditaments vpon his owne seisin or possession therein, aboue xxx. yeres nett before the teste of ỹ originall of the same writt.

Limitation of fifty yeres.

Limitation of xxx. yeres.

Item

¶ Item none shal make any auowrie or conisance for a rent, suit, or seruice, and alleage any seysin of the same in his auowrie or conisaunce in possession of his auncestours or predecessours or in his own possessiō, or in ỹ possession of any other whole estate he shall claime to haue aboue fifty yeres next before the makinge of the saied auowry or conisance. Auowry.

Moreouer all formedones in reuerter, formedons in remainder, & Scire facias vppon fynes of landes or other hereditamentes to bee sued, shalbee taken within fifty yeres next after the title of action fallen. And if any do sue any of the said actions or writs for landes or other hereditaments, or make any auowrie conisaunce, prescription or clayme for any rent, suit, seruice, or other hereditament, & if he proue ỹ he or his auncestours or predecessours were in actual possession or seisin therein, at any time within ỹ yeres before limitted, if the same bee trauersed or denied by the party plaintife demaundant or auowant, or by the party tenant or defendaunt, he and his heires shal from henceforth be vtterly barred for euer of euery the said writtes, actions, auowries, conisaunce, prescription, title, & clayme hereafter to be sued or made for the same landes or other ỹ premisses, for which such actiō, writ auowry conisance title or claime hereafter shall be sued or made. Barre.

¶ Prouided, that all persones which nowe haue any of the sayd actions, writtes, auowries Scire facias, conisaunce, prescription, tytle, or clayme depending, or that hereafter shall sue or bringe any of the sayed writtes, or actions, or make any of the said auowries, conisaunces,

prescription, titles, or claime at any time before the feast of the assention of our lord which shall be in the yere of our lorde a thousand fiue hundred forty and fyue, shall alledge their seyson of their auncestors or predecessours, or their owne possession and seyson, & also haue all other lyke auantage in the same writs, actions, auowries conusaunces, prescription and claimes, as they might haue had before the making of this statute. Prouided also, that if any person bee nowe within the age of xxi. yeres or couert baron, or in prison, or out of this Realme, nowe hauinge cause to bringe any of the sayd writtes or actions or to make any auowries, conusaunces, prescription, or claimes, it shalbe lawfull to such person to sue or bringe any of ye said actions, or to make any of the sayed auowries, conusaunces, titles, or claimes, at any time within fyue yeres next after such persone now being within age, shall accomplish the age of xxi. yeres, or nowe beinge couert baron, shalbe sole, or nowe beinge in prysion, shalbe at their libertie, or beinge out of this realme, shal come and bee within this Realme. And that euery such persons in their sued actions, auowries, conusaunces, titles or claimes to bee made sued or commenced within the sayd fyue yeres, shall alleage the seison of their auncestours, or predecessours, or of their owne possession, or of the possession of those whose estate they shal then claime. And also yt ye sayd fyue yeres shall haue like auauntage in the same as they might haue had before the makinge of this act.

Whether state shal take effect

Prouided also, that if the said persons nowe being within age, or couert baron, in prison, or

out

out of this realme, to bee within age, or beinge couert or in prison, or out of this realme or decease within iij yeres next after they shal accõplish their full age, or shalbe at large within this realme, or shal become sole and no determinacion or iuggemẽt had of such title, actions, or rightes so to them accrewed, then the next heire of such persons shal enioy like auantage to sue, demaũd, auowe, declare or make their said titles, claimes or prescriptions within sixe yeres next after the death of such persons, as the same infaunt after his full age, or the saied woman couert after the death of her husbande or the same person beynge out of this Realme after his prayer or comming into the same, or the said person imprisoned after his enlargement & commingout of prison might haue hadde within sixe yeres then next ensuynge by force of the prouision last before rehearsed.

¶ Prouided also that if any personnes before the fayde feast of the Ascention sue any of the saied actions, or make any auowrie, tytle, or clayme, and the same happen by the death of any the partyes thereunto, to bee abated before iudgement or determination thereof had, then the said personnes being demaundauntes, or auowants, or makinge any such constraunce, prescription, tytle, or clayme beinge then on iyue, and if not then their next heires maye commence their action, and make their auowrye, constraunce, or clayme vppon the same matter, within one yere next after such suit abated, and shall haue like aduauntage to sue, demaund, auowe, declare, or make their saied title, claymes,

or prescription Sin the saide one yere, as the demaundant in such writ or suit abated or as such as did auow or make conisaunce, title, claime or prescription might haue enioyned in the former action or suit.

Attaint vpon false verdit.

¶ Prouided furthermore, that if any false verdit hereafter be geuen in any of the sayd actions suites, auowries, prescriptions, titles or claimes, then the party greued shal haue his attaint vpō euery such verdit, & the plaintife in the same attaint vpon iudgement for him geeuen shall haue like recouery execution, & other aduauntage as heretofore hath bene vsed.

¶ Of fines.

Fines haue their name, because they mark a finall end and determination of al suits, strifes and debates betwene men.

For the due leuyinge wherof it was enacted in the fowerth yere of king Henry ꝟ vij. ꝟ they must be solemply before the Justices of the common place, redde and proclaymed the same terme, and three termes next followynge the ingrosement, at which tymes al the plees must cease. And such fines shalbee a sufficient barre and discharge agaynst all personnes sauinge women that bee couert baron, if such women bee not priuy to the same fyne, or such as be within age, in prison, out of the Realme or out of their ryght myndes. But these fynes shall not conclude ne barre all straūgers which haue right to enter or to haue action, if they come within fiue yeres after such proclamati-

ons

ons made or (in case the cause of action falleth vnto them after the fine so duely leuied) if they come & cõmence their action & suite within v. yeres next after such cause of action to them accrued. And they may sue against ỹ takers of the profits. But if they that haue right thereto be within age, in prison, couert baron, or out of the realme, or not in their right memorie, then their title or entre shalbee saued vnto them till they be of ful age, out of prison, discouered and sole within the realme, or of right mind, & then within fiue yeres after their actiõ or entre must bee sued or made with effect.

¶ Also by the said statute it shalbe a good plee for all straungers to say, that they that were parties to the fine nor none other to their vse, had any thing in the tenements or lands at the time of the leuying of the fine.

¶ Furthermore in the xxxj yere of the kinge for thauoidinge of certaine doubtes and ambiguities, it was enacted, that all fines as well heretofore leuyed, as hereafter to be leuyed, according to the said statut of henry the seuenth by anie personne of the full age of xxj. yeres, of any landes or other hereditamentes, beyng before the fyne leuied in anie wise tailed vnto him or to anie of his auncestors in possession, reuersion, remainder, or in vse, shalbe immediatly after the same fine leuied, ingrossed, and proclamations made a sufficient barre and discharge for euer, as well against him, and his heires claiming the same onely by force of anie such intaile, as against all other to their vse, so that the same fines bee nor leuied by any woman after the death of her husbād, contrary to the sta-

An.11.H.7. tute made the xj. yere of Henrie the seuenth of lands & tenemts of the inheritance of purchase of her husband or of any of his auncestors geue to her in dower, for terme of life, or in taile in use or in possession. Excepted also al fines leuied or to be leuied of any such lands or hereditaments of the owners thereof by any special act of parliament made vith the said fowerth yere

An.3.H.7. of Henrie the vij. be restrained frō making anie alienations, discontinuances or other alienations of the same. Also of such lāds as be now in sute & variance in any of the kinges courtes, or whereof any evidences be now in demaund in ỹ chauncery, or which be al ready recouered. Excepted also fines leuied or to be leuied by any ỹson of lands or tenementes graunted to him or to his auncestours in taile, eyther by the kinges letters patents or by vertue of any act of parliament, whereof the reuersiō is in the king. And confirmed in the 34. yere of H.8.

¶ Of testaments or last willes.

Diuision. TEstamētū in latin is as much to say as mētis testatio, ỹ is a declaration or witnessing of a mans minde. And there be two sorts of testaments: The one is called testamentum scriptum, that is, a

writtē testamt written testament, or last will by writing, and

The testamēt nuncupatiue. the other is called testamentum nuncupatiuū, a testament nuncupatiue, which is when a manne doeth expresse by mouth hys last vvyll and testament without writing, by calling before him certaine of his neighbours in whose pre-

presence he doeth signifie by wordes his last minde & will. And this for most part me vsed to do when for feare of sodenes of death, they dare not abide ỹ writing of their will. And this will (vnlesse it be in certaine cases) is as stronge & as sure as is a testament or last will put in writyng and sealed with the seale of the testatour.

¶ Also though a testamt by writig be not sealed wt ỹ seale of the testatour, yet is ỹ testament good & effectual in the lawe.

¶ And ye shal also marke, ỹ where a mā maketh once his testament & will, & afterward maketh another will by wordes, if his last will be proued before the ordinarie and by him put in writig & inseales wt his seale, such last will shal anoide the first will vnlesse it be in special cases & so alway the latter will & testament shall anoid the former.

¶ Finally an act made ỹ xxj. yere of king Henry the eight, it was ordeined that where part of the executors named in the testament wherein any lands or tenements be willed to be solde by them, refuse to take vppon them the administration & ỹ residue do take the charge & administratiō vpō them, in this case al bargaines & sales in the said lands made onely by those executors ỹ toke the administration of ỹ testamt vpon them, shalbe as good & effectual, as if al the residue of the executors so refusing had ioyned in the making of the bargaine and sale. Executors.

¶ The difference betweene executors and administratours.

Execu-

Executours is when a man maketh his testa-
ment and last will, and therein nameth the
person which shall execute his testament, then
he that is so named is his executour, and such
an executour shal haue an action against euerie
dettour of his testatour.

Assets in the hands of exe-cutours.

And if the executours haue assetz, that is to say
sufficient in their hands, then shal euery one to
whom the testatour was in det haue action a-
gainst the executour if he haue an obligation or
specialtie to shew. But in euery case where the
testatour might wage his law, there no action
lyeth against the executour.

¶ Administratour is he, to whom the ordinary
committeth the administration and bestowing
of the goods of a dead man, for default of an ex-
ecutour. And actions shall lye against him and
for him as for an executour, and he shalbe char-
ged to the value of the goods of the dead, & not
further if it be not by his false plee, or for that
he hath wasted the goodes of the dead. But if
the administratour die, his executoures be not
administratours but it behoueth the ordinarie
to commit a newe administration. Howbeit yf
a straunger I meane him that is neither execu-
tour named in the testament and last will, nor
yet administratour appoynted by the ordinarie
will take the goodes of the dead, and minister
of his owne head and minde without lawfull
authoritie, this person shalbe charged and such
as an executour, and not as administratour in
an action which is brought against him by any
creditour. But if the ordinarie make a letter ad
colligendum bona defuncti hee that hath such a
letter is not administratour, but the action lye-

Executor of his owne wrong.

eth

eth in this case against the ordinary, as well as if he tooke the goods by his own hand or by the hand of any other his seruant, by any other cõmaundement.

¶ An act of probate of testaments made. An. 21. H. 8.

NOthing shalbe taken by anie hauing auctoritie to take probatiõ, insinuatiõ or approbation of any testamẽt where the goods of ỹ testatour doe not amõt aboue the value of C. s. except to the scribe for writting thereof vj. d. And for the cõmission of ministration of the good of anie dying intestate, not being likewise aboue C. s. vj. d. Also none hauing power to take probats of testaments shall refuse to approue testamentes being lawfully offred vnto them in writynge with ware thereto affixed readie to be sealed, so that they be lawfully proued before the same ordinary to be true. And when the goods of the testatour do amount aboue C. s. & not exceede xl. li. none shal take for the probation registring, sealing and writing of any such testamẽt aboue iij. s. iiij. d. Whereof to bee to them that haue auctoritie to take the probation. ij. s. fiue pence and the other twelue pence to the scribe for registring.

¶ And where the goods amount aboue xl. li. then onely vj. s. to be taken, whereof to be to the that haue auctoritie to take the probatiõ. ij. s. and vj. d. and the other iij. s. vj. d. to the scribe for

for the registring, or els if he refuse that ij.s.vj.d. then he to haue for euerie x. lynes euerie lyne conteining in length x. ynches, a peny.

¶ And they that haue aucthoritie as is aboue-saide, shal approue insinuate, seale, and register the testamẽts, and deliuer them sealed with the seale of their office to the executours for ẏ sõme aboue said, & that with cõuenient speede Sout any frustratorie delay.

¶ And if anie person die intestate, or the executours refuse to proue the testament, then they hauing aucthoritie as is abouesaid, shal graunt the administration of the goods to the wydowe of the person deceased, or to the next of kinne or to bothe after their discretion, taking suertie of them for the true administration of the goodes and dettes, which they shalbe so aucthorised to minister. And where one or diuers clayme the administration as next of kynne, which be egall in degree of kynred, or where anie one person desireth the administratiõ as next of kin where in deede diuers persons dee in equalitie of kynred, then in any such case the ordinary shalbe at libertie to take one or mo making request. And where diuers require the administration, or where but one or mo of them, & not all being in like degree make request, then the ordinarie shall admit the widowe and him of them onely making request or anie of them, takinge nothing for the same, where the person disseysed died not worth c.s. And if he dyed worth c.s. and not aboue xl li. then ij.s.vj.d. onelie to bee taken. And the executour or administratour calling to him the dettours two at least, or such persons to whom anie legacie was made

Suertie.

and

and if they refuse thē two next of kinn to ẏ ꝑsō deceased & in their defaultz two other honest ꝑsons shal by their discretions make a true inuētory indented of al the goods, which personnes swearing before the Bishop or his officers to be true shal deliuer the one part thereof vnto them & the other kepe him selfe.

Inuentory of goods.

¶ And nōe hauing aucthoritie to take probate of testaments vpon paine contained in this statute shal refuse to take any such inuentory presented or tended to them.

¶ Prouided if any person shal dispose or wyll by his testament any landes or hereditamentes to be solde, that the money or profits of the same be accompted for goods or cattels. And they hauinge the aucthoritie aboue said vpon the delyuery of the seale and signe of the testatour shall cause the same to be defaited & incontinent shall redeliuer to the executour without any claime, and if any require a copy of the testament & inuentory thē they hauing aucthoritie of their ministers, shal without delay deliuer them a copie takinge therefore or els for the registring of the same as before or els for, euery tenne lines one peny.

¶ Prouided, that where they hauing aucthoritie as is aboue said haue vsed to take lesse for probate of testamēts or other things cōcerning the same then is here specified, they shal take as they did before this act.

¶ Nowe if any that haue aucthoritie to take probate of testaments or their ministers do attempt against this act, they shal forfait for euery time to the party greued as much money as they shal take cōtrary to this act. And ouer

that

that x.li. the one halfe to the king the other to ye party greued, ye wil sue by action of debt bill in=tormatiō or otherwise in any of ye kīgs courts, wherein no essoine protection nor wager of the law shalbe allowed. And euery of them shalbes charged for him selfe & for none other.

¶ Prouided ye euery one hauing auctthority a=bouesaid may call before them euery person na=med executor, to the entent to proue & refuse the testament & to bring inuentories & to doe euery other thinge concerning the same as they might before this act so ye neither they nor their mini=sters shall take aboue the fees limitted by this act.

¶ How landes and tenements may be by testament or otherwise disposed enacted. An. 32. M. 8.

EUery person hauing lands or other he=reditamēts holdē in socage, or of the na=ture, and not hauing any lands or here=ditaments holdē of the king by knights seruice, or socage tenure, in chiefe, or of the nature of socage tenure in chiefe, nor yet of any other person by knights seruice, may geue, dispose, & deuise aswel by testament in writinge as otherwise by any act lawfully executed in his life al his said lands or hereditaments or a=ny of them.

¶ And euery person hauing lands or other he=reditamentes holden of the kinge in socage, or of the nature of socage tenure in chiefe, and ha=uinge also any other landes or hereditamentes holden of any other personne in socage or of the

the nature of socage tenure, & not hauig any hereditaments holden of the kinge or of any other by knightes seruice may frō the said time geue and deuise aswel by testament in writing as otherwise by any act lawfully executed in his life, al and euery of them at his pleasure sauing tō the king al his right of primer season and reliefe, & also al other rights and dueties for tenurez in socage or of the nature of socage tenure in chiefe, as heretofore hath bene accustomed, the same to be taken & sued out of the kings hands by the persō to whom any such lands shalbee disposed or deuised in like manner as hath bene vsed by any heire or heires before the makinge of this statute. And sauing and reseruinge also fines for alienations of such lands & heredytaments holden of the king in socage or ẏ nature of socage tenure in chiefe, wherof shalbe any alteration of freehold or inheritance made by wil or otherwise as is aforesaid.

Primer seasō reliefes.

¶ Item al persons hauinge landes or other hereditamentes of estate of inheritaunce holden of the king in chiefe by knightes seruice or of ẏ nature of knightes seruice in chiefe may geue, will, or assigne two partez of the same in three partes to be deuided or els asmuch thereof as shall amount to the yerely value of two partes of the same in three partes to be deuided in certainty and by special diuisiōs as it may be knowen in seueralty for the auauncement of hys wife, prefermēt of his children & paiment of his debts or otherwise at his pleasure. Sauing to ẏ king aswel ẏ wardship & primer season of as much as shal amount to the clere yerely value of the

the third part thereof without diminution dole fraude, couein charge or abridgement therof, as also al fines for alienations of al such landes holde of him by knights seruice in chiefe whereof shal be any alteration of freehold or of inheritaūce made by will or otherwise.

¶ And euery person hauinge lands or tenemēts of estate of inheritaunce holden of the kynge in chiefe by knightes seruice and other landes holden of him or of any other by knightes seruice or otherwise may geue or assigne by hys testament or otherwise as is aforesaid, two partes thereof in three partes to bee deuided or cis asmuch thereof as shall extend to the yerely value of two partes to be deuided in certainty. Sauinge to the king as wel the wardshippe & prim seasin of as much as shall amoūt to the yerely value of the thirde part, without diminution &c. & also for al fines for alienatiō as is aboue saied.

Fines for alienations.

¶ Item euery person holding landes or tenementes onely of any other then the kynge by knightes seruice, & other lands & tenemēts in socage or of the nature of socage tenure may geeue dispose or assure by testamēt or otherwise two partes thereof holden by knightes seruice as much as shall amount to the ful yerely value of two partes, & also al the lands & tenements holden by socage or of ỹ nature of socage tenure at hys pleasure. Sauing to the lord of the lands & tenemēts holde by knights seruice for his wardship as much therof as shal amount to the clere yerely value of the third part without diminution &c.

And euery person holding onely of the kinge

by

by knightes seruice, but not in chefe, or holding of the king by knightes seruice, and not in chiefe, and also other hereditamentes of others by knightes seruice, and holding also other hereditaments of ane other persone in Socage or of the nature of socage tenure, may geue and assure by his last will or otherwise two partes of that is holde of the kyng by knightes seruice and two partes of that is holden of ane other person by knights seruice, or as much of either of them as shall amount to the full yearely value of two partes, and also al his lands & tenements so holden in socage, or of the tenure of socage tenure, saueng as well to the king the wardship of as much as shal extend to ỹ cleare yerely value of the third part of ỹ same so holden of him by knightes seruice without diminution &c. As also to the lordes of whom ane of the said lãds bene holden by knightes seruice for the wardship as much of the same as shall amount to the cleare yerely value of the thirde part in maner aboue declared.

¶ And if that third part which in any of ỹ cases aboue said shall come to the kyng do not amount to the cleare yerely value of the full iij. part of al ỹ said hereditaments whereof ỹ king shalbe entituled to haue the custodie or primer seysin: then the king may take into his handes as much of the other two partes of the said hereditamentes as with that of the same hereditamentes remayning in the handes shall make vp the cleare yearelie value of the thirde part thereof so to be hadde to hym in title of wardshippe and primer seysin. And like benefite to bee geeuen to euerie lorde of whom ane such

hereditament shalbe holden by knyghts seruice concerning only his third part for title of wardshippe.

Also al persõs shal sue their liberties for possessions, reuersions, or remainders, and also pay reliefes, and heriots like as they shoulde haue done before the makinge thereof. And fines for alienations shalbe payd in the chauncery vpon writtes of entre in the post to be obtained there for common recouories to bee suffered of anie landes holden of the king in chiefe in like manner as is vsed vpon alienations of lands so holden in chiefe by fine or feoffement.

Prouided that in such cases where fines for alienation shalbe paid in ỹ chauncery for writs of entre in the post as is aforesaide none other fine shalbee payed there for anie such writtes.

Item where two or more persons holde of the kyng by knightes seruice iointly to them, and to the heires of one of them, & hee that hath the inheritance thereof dieth, his heire being within age, the king shal haue the warde and mariage of the body of such heire the like of the freeholder or freeholders of the landes so holden by knights seruice notwithstanding.

Sauing to al women such right and title of dower as they owe to haue of any lands or tenements to be assigned vnto thẽ out of the two partes of the said landes or tenementes seuered from the third part as is aboueseyd & not other wise. And sauing also to the king the reuersion of al such tenementes in iointure, & dower immediatly after the death of such tenaunt, if they shal happen to dye, duryng the nonage of the kinges wardes.

It

IT is enacted, that from the firſt day of Julye in the yere of our Lord a thouſand fyue hundred & fourty, al mariages within this church of Englād contracted betwene lawful perſons as by this act we declare al perſons to bee lawfull that be not prohibited by Gods lawe to mary, ſuch mariages, being contract & ſolempniſed in the face of the church and conſummate with bodely knowledge or fruit of childzen or childe being had therein betwene the parties ſo maried ſhalbe demed and taken to be lawefull, good, and indiſſoluble, notwithſtanding any precontract of matrimony not conſūmate & bodely knowlege either of the perſonnes ſo maried or both ſhall haue made with any other before the time of cōtracting that mariage which is ſolempniſed and conſummate, or whereof ſuch fruit is iſſued or may iſſue as afore, & notwithſtanding any diſpenſation, preſcriptiō lawe or other thinge graūted or confirmed by act or otherwiſe. And that no reuerſion or prohibition (Gods lawe except) ſhal trouble, impech any mariage without lineal degrees. And that no perſō ſhal after the ſaid j. day of July aforeſaid be admitted to any of the ſpiritual courtes within this the kinges realme or any his other landes and dominions to any preſſe, plee, or alegation contrary to thys act.

FINIS.

The Table.

HEre it must be remembred that ẏ number in this table folowing, doth expres & shewe the lease where you shal finde your desire, & this letter a. maketh mẽtion of the first page or side, & this letter b. the second page or side.

A

¶ Abatement of the writ fol. 46.b
Accompt 35.b
Acquitel 38.a
Administratour 61.a
Ages of man and woman 35.b
Ayde praier 27.a
Annuitie 48.a
Assets in the hands of executors 41.b
Assise 22.31.b 50.a
Atturnemẽt 31.a 49.b
Auowry 25.b 53.58.a

B

Barre 58.46.a
Base tenure 6.a
Bastard 12.a 44.b
Burgage tenure 43.a

C

Castelward 36.a
Chattel 3.a
Chattels reall & personal 6.a
Copy of court rolle 4.b
Cornage 37.a
Conditions 27.b
Conditiõs in dede 28.
Conditions in law 29.a 27.b
Cõditions against the lawe 29.a
Conditions repugnãt 29.b
Conditions impossible 29.a
Conditions whereof straungers shal take auantagr 21.b
Customes 43.a

D

Dam̃ in dower 11.a
Damages 25.51.b
Double dãmages 50.a
Dett 3.30.b 51.53.a
Dett against the ordinary 23.a
Deuise by custome of some borough 43.b
Deuise 11.b.20.b
Diem clausit extremũ 29.a
Discent 12.15.a
Disclaimer 38.b

Dis=

Disperagemẽts 35.b
Disseisin 18.b
Disseisin of rent seeke. 50.a
Distresse 4.11.48. 51.a.
Distresse forescuage 34.a
Tenant by dewine seruice 42.b
Tenant in dower 68.b
Dower by custome 43.b

E.

Ejectione firme. 26.b
Ejectione custodie 26.b
Encloser 50.b
Eschete 12.b
Escuage 33.b
Escuage certein 34.a
Escuage vncerteine 34.b
Estoppel 48.b
Executours 50.51.a
Executours of their owne wrong 61.b
Extinguishment 69.a

F.

Fealtie 33.b
Fee simple 11.a
Fee taile 14.a
Fee onely defyned 22.a
Fees of office 40.b
Fines 57.b
Fines of alienations 64.b
Forfaiture 4.16.a 46.b
Formedon in the discender 55.b
Formedon in the reuerter. 55.b
Formedon in the remainder 55.b
Forme of pledinge 26.a
Frankalmoigne 42.a
Frankefee 46.a
Franke mariage 14.17.b.
Freeholde 3.a

G.

Graunts by corporations 52.b

H.

Hotchpott 17.a
Homage 22.a
Homage auncestrell 37.b

I.

Inkraunchisementes 45.b.
Incressu sine assensu cap 56.a
Incressu sine assensu confratrum & consororum 56.a
Inheritance 2.a

Inuentorie of goodes 63.a
Iointenants 18.22.a
Iointenants personall and real goods 19.a
Iointenant of a warde 36.a
Iuris vtrum 56.a
Iustices of peace 53.b

K.

Knightes seruice 32.b

L.

Letter ad colligendum 62.a
Limitatiõ of prescription 57.b
Liuery and seasō 3.30.b.
Liueries 38.b

M.

Mammillion 45.a
Mariage 40.a

O.

Obligation 29.b
Ordinary 40.a

P.

Partitione faciendā 27.a
Parceners 12.16.b
Petit sergeantie 37.a
Plaint of assise 25.b
Plee in dett 3.b
Plees in auowry 51.b
Prescription 24.b
Primer seasō 38.b 64.a
Probate of testaments 61.a

R.

Redisseisin 50.b
Relefe 36.42.64.b
Release 23.b
Rent reserued 3.a
Rent charge graunted by a iointenant 20.b
Rentes 47.a
Rent charge 48.a
Rent secke 48.a
Rent seruice can not be apportioned 49.a
Rent is incident to a reuersion 49.b
Repleuin 48.a 50.b
Rescous 25.b 50.a
Writ of rescous 31.b
Resceit after default 23.a
Respect of homage 40.a

S.

Scire facias 58.a
Seconde deliuerance 50.b
Socage tenure 41.b 44.a
Suertie 53.62.b
Surrender 5.a
Surrender of the olde lease 52.a
Survivour holdeth place 18.b

Stulpens 32.a
T
Tenaunt for yeres 3.b
Tenant for life 6.b
Tenant by the curtesie 6.7.8.b
Tenaunt by copye of court rol 4.b
Tenants in comon 18. a 21.a
Tenant after possibilitie of issue extinct 15.b
Tenant at wil 4.b
Testaments & willes 40.b
Trespas 4.5.26.b
V
Value of mariage. 36.a
Villain in grosse 45.b
Vyllayne regardaunt 45.b
Villenage 43.b
Voucher 18.b
W
Wager of lawe 66.b
Warde 33.b
Warranty 38.a
Waste 4.7.8.a
Waste dispunishable 15.

Finis.

W. S.